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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-397**

In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy
for Certificate of Need for an Extended Power Uprate at the Prairie Island Nuclear
Generating Plant In the Matter of the Application of Northern States Power Company
d/b/a Xcel Energy for Certificate of Need for Additional Dry Cask Storage at the Prairie
Island Nuclear Generating Plant In the Matter of the Application of Northern States
Power Company d/b/a Xcel Energy for an LEPGP Site Permit for the Extended Power
Uprate Project at the Prairie Island Nuclear Generating Plant

**Filed November 16, 2010
Affirmed
Larkin, Judge**

Minnesota Public Utilities Commission
File No. E-002/CN-08-509

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Considered and decided by Larkin, Presiding Judge; Stoneburner, Judge; and
Hudson, Judge.

UNPUBLISHED OPINION

LARKIN, Judge

In this certiorari appeal, relator challenges the Minnesota Public Utilities Commission's grant of a certificate of need for an extended power uprate. We affirm.

FACTS

Respondent Northern States Power Company d/b/a Xcel Energy (Xcel) operates the Prairie Island Nuclear Generating Plant in Red Wing. On May 16, 2008, Xcel applied to the Minnesota Public Utilities Commission (MPUC), also a respondent in this action, for certificates of need for an extended power uprate to increase the plant's generating capacity by 164 megawatts and for additional spent fuel storage at the plant. On August 1, Xcel applied for a site permit for the proposed uprate. In addition to the certificates of need, Xcel must obtain operating license amendments from the Nuclear Regulatory Commission (NRC) in order to implement the uprate.

The MPUC referred the matters to the Office of Administrative Hearings (OAH) for a contested-case proceeding. The MPUC also authorized the Office of Energy Security (OES) to initiate a full environmental review. Relator Prairie Island Indian Community (community) and the City of Red Wing intervened in opposition to the uprate. The OES participated in support of the uprate.

On November 21, the OES issued a notice detailing the scope of the environmental review it would conduct regarding the requested certificates of need and site permit (scoping decision). The OES announced that it would prepare a single

environmental impact statement (EIS) addressing the environmental consequences of the requested certificates of need and site permit.

On March 17, 2009, the OES issued its draft EIS for public comment. The comment deadline was May 8. The OES also issued a notice of availability of the draft and notice of public meeting. The public meeting was held on April 21, and on July 31, the OES issued its final EIS, with comments due by August 21.

The assigned administrative-law judge (ALJ) held evidentiary hearings on June 8-12 and June 29. Xcel called nine witnesses. The parties also filed direct, rebuttal, and surrebuttal written testimony. After the hearing, the parties filed initial and reply briefs and proposed findings of fact and conclusions.

On October 21, the ALJ filed his Findings of Fact, Conclusions of Law, and Recommendations with the MPUC. The ALJ's findings analyzed the record evidence, including evidence of need; alternatives; potential effects on the natural and socioeconomic environments, including human health; and applicable state and federal laws. Based on the record, the ALJ recommended that the MPUC issue the certificate of need and site permit for the proposed uprate, as well as the certificate of need for the expansion of spent fuel storage.

The MPUC received exceptions to the ALJ's findings from the community, the City of Red Wing, the OES, and Xcel. The community limited its exceptions to the ALJ's recommendations on the proposed uprate. The community raised four challenges: (1) Xcel failed to demonstrate that additional generating capacity from the plant is needed; (2) Xcel failed to prove that a more reasonable and prudent alternative to the

uprate does not exist; (3) Xcel failed to prove that the proposed increased power production is compatible with protecting the natural and socioeconomic environments, including human health; and (4) Xcel failed to demonstrate that the proposed increase in generating capacity will comply with relevant policies, rules, and regulations of other state and federal agencies and local governments.

On November 12, the MPUC heard arguments from the community, the City of Red Wing, the OES, Xcel, and members of the public. The community and the City of Red Wing opposed the uprate. The MPUC also heard testimony from the supervisor of the Radioactive Materials Unit of the Minnesota Department of Health (MDH), regarding recent revisions to MDH's environmental monitoring report. After inviting questions from the parties, the MPUC took administrative notice of the revised report. The record was then closed.

On December 18, the MPUC issued its order. The MPUC adopted the ALJ's findings that additional generating capacity is necessary because forecasts demonstrate a growing demand for power in Xcel's service area and that it will be more cost-effective to meet the demand through the use of additional generating capacity than through the other presented proposals. The MPUC further found that the uprate is the most reasonable and prudent alternative and that it is expected to increase the reliability of Xcel's energy supply.

The MPUC also found that Xcel had adequately explored hydropower as an alternative. The MPUC noted that while Xcel did not solicit bids for a long-term hydropower contract, Xcel did conduct a screening analysis of the possibility of acquiring

a contract, but rejected the option as infeasible. The MPUC also noted that Xcel is knowledgeable about the state of hydropower purchase contracts because it already has contracts for hundreds of megawatts of hydropower from Manitoba Hydro.

The MPUC generally concurred with the ALJ's finding that the uprate will provide benefits to society in a manner compatible with protecting the natural and socioeconomic environments, including human health. The MPUC considered the community's concerns regarding pollution from the uprate, including tritium in the groundwater and thermal discharge. The MPUC also considered whether increased radiation levels from the uprate might warrant a program of genetic testing. The MPUC ultimately determined that, subject to certain conditions, these concerns do not make the uprate incompatible with protection of the natural and socioeconomic environments, including human health.

The MPUC found that Xcel provided a sufficient basis to conclude that granting the certificate of need for the uprate will not conflict with relevant policies, rules, and regulations of other state and federal agencies and local governments. The MPUC adopted the ALJ's conclusion that there is no need to defer a decision on the certificate of need for the uprate until the NRC approved the necessary attendant amendments to Xcel's operating license. And the MPUC noted that Xcel made a commitment to acquire the requisite regulatory approvals before implementing the uprate.

The MPUC agreed with the ALJ's conclusion that the legal criteria for issuance of the certificate of need for the uprate and site permit were satisfied. The MPUC also concluded that the record supports the grant of the certificate of need related to the

additional dry-cask storage of spent fuel. But the MPUC imposed the following conditions: Xcel must provide a compliance filing/status report on its emergency response plans; Xcel must implement, in full, each and every objective and criterion set forth in the Nuclear Energy Institute's Groundwater Protection Initiative by April 30, 2010; Xcel must provide detailed written reports to the community and the City of Red Wing, as well as the MDH, every three months, which will include well-monitoring information and also summarize material information discovered as it implements and maintains each discrete subpart of the groundwater protection initiative; Xcel must permanently discontinue the discharge of liquid waste into a landlocked area; Xcel must conduct a comprehensive surface investigation around wells P-10, MW-7, and MW-8 and consider the installation of other monitoring wells in and around the areas of wells MW-7 and MW-8; and Xcel must study the effect of thermal discharge on Lake Pepin.

After receiving several requests for reconsideration, the MPUC clarified its order on January 27, 2010. But the MPUC did not change its underlying decision to grant the certificates of need and site permit. This certiorari appeal follows, in which the community challenges the grant of the certificate of need for the extended power uprate.

D E C I S I O N

The community claims that the MPUC erred by granting Xcel's request for a certificate of need related to the proposed uprate. The community argues that the issuance of the certificate of need is in excess of statutory authority, affected by errors of law, unsupported by substantial evidence, and arbitrary and capricious.

An appeal from a decision and order of the MPUC may be commenced in accordance with the Administrative Procedure Act (APA). Minn. Stat. § 216B.52, subd. 1 (2008). When reviewing an agency’s decision in a proceeding under the APA, this court

may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusions, or decisions are:

- (a) in violation of constitutional provisions; or
- (b) in excess of the statutory authority or jurisdiction of the agency; or
- (c) made upon unlawful procedure; or
- (d) affected by other error of law; or
- (e) unsupported by substantial evidence in view of the entire record as submitted; or
- (f) arbitrary or capricious.

Minn. Stat. § 14.69 (2008).

The appellant bears the burden of proving that the agency’s decision violates one or more provisions of Minn. Stat. § 14.69. *Markwardt v. State, Water Res. Bd.*, 254 N.W.2d 371, 374 (Minn. 1977). Decisions of administrative agencies are presumed to be correct and to have been based on the application of the expertise necessary to decide technical matters that are within the scope of the agencies’ concerns and authority. *In re Universal Underwriters Life Ins. Co.*, 685 N.W.2d 44, 45-46 (Minn. App. 2004) (quotation omitted). In reviewing agency decisions, the courts must exercise judicial restraint so as not to substitute their judgment for that of the agency. *Id.* at 45 (quotation omitted). “We defer to the agency’s expertise in fact finding, and will affirm the agency’s decision if it is lawful and reasonable.” *In re Investigation into Intra-LATA*

Equal Access & Presubscription, 532 N.W.2d 583, 588 (Minn. App. 1995), *review denied* (Minn. Aug. 30, 1995).

The community advances several arguments on appeal. First, the community argues that there is no need for the additional 164 megawatts of capacity. Second, the community argues that the uprate should not have been approved without further exploration of other reasonable alternatives, such as hydropower. Third, the community argues that the uprate will not provide benefits to society in a manner compatible with protecting the natural and socioeconomic environments, including human health. Fourth, the community argues the uprate is not likely to comply with relevant policies, rules, and regulations of other state and federal agencies and local governments. We address each in turn.

A. *Determination of Need*

Minnesota Rule 7849.0120 (2009) sets forth the criteria that must be satisfied before the MPUC grants a certificate of need. The rule provides, in relevant part, “[a] certificate of need must be granted to the applicant on determining that . . . the probable result of denial would be an adverse effect upon the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant’s customers, or to the people of Minnesota and neighboring states.” Minn. R. 7849.0120 (A).

The community argues that the MPUC erred by determining that the uprate is necessary to meet reasonably predicted demand. The MPUC determined that the proposed uprate is necessary by examining the following criteria: the accuracy of the applicant’s demand forecast; the effects of conservation programs; the effects of

promotional activities that may have increased energy demands; the ability of current and planned facilities that do not require a certificate of need to meet energy demands; and the effect of the modification on the efficient use of resources. *See id.* (A) (1)-(5).

The MPUC analyzed Xcel's demand forecasts and determined that they accurately estimate the lower range of Xcel's projected customer demand. The demand forecasts were independently confirmed as reasonable by the OES, which concluded that the forecasts understate the likelihood of increased future energy needs. The MPUC found no evidence indicating that the forecasts had been influenced by promotional activities.

The MPUC considered whether current and planned facilities are able to meet Xcel's needs and concluded that the uprate is necessary because the cost of the uprate will be less expensive than use of these facilities. The MPUC also found the uprate is preferable to the alternatives. The record supports this finding: Xcel provided testimony that the uprate is needed because it will enable Xcel to displace carbon emitting resources and achieve the carbon reductions specified in Minn. Stat. § 216H.02, subd. 1 (2008).¹ Lastly, the MPUC decided that the uprate is necessary because it is the most efficient use of Xcel's resources.

In 2008, Xcel's actual customer demand was 8,694 megawatts. While the forecasted demand dropped between the time of Xcel's request for the certificate of need and its 2010 budget forecast, demand was still increasing from current levels, just at a slower rate. Xcel's budget forecast projected a customer demand of 9,506 megawatts for

¹ Minn. Stat. § 216H.02, subd. 1, sets a goal of reducing statewide greenhouse gas emissions to a level at least 30% below 2005 levels by 2025.

2012, 9,562 megawatts for 2013, 9,610 megawatts for 2014, and 9,665 megawatts for 2015. An OES expert witness testified that Xcel's demand for energy would need to drop to approximately 3,000-5,000 megawatts before the uprate would become unnecessary. Moreover, because Xcel needs to displace its natural gas generation facilities to help balance the intermittent power produced from wind energy projects that are necessary to comply with Minn. Stat. § 216H.02, subd. 1, Xcel needs to build or purchase replacement base-load capacity and energy. A need would therefore still exist for the increased capacity and energy associated with the uprate even if demand were not projected to increase. The community provided nothing to refute this evidence that even though projected demand is lower than expected, the uprate is still necessary.

The community asserts that the additional 164 megawatts that will result from the uprate are unnecessary, arguing that because the megawatts are not immediately needed, Xcel is not entitled to a certificate of need. But the community's argument is based on a narrow interpretation of need. When determining whether an uprate is necessary, the MPUC must examine whether "the probable result of denial would be an adverse effect upon the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states." Minn. R. 7849.0120 (A). In making this assessment, the MPUC considers multiple factors.² In

² The MPUC must consider (1) the accuracy of the applicant's forecast of demand for the type of energy that would be supplied by the proposed facility; (2) the effects of the applicant's existing or expected conservation programs and state and federal conservation programs; (3) the effects of promotional practices of the applicant that may have given rise to the increase in the energy demand, particularly promotional practices which have occurred since 1974; (4) the ability of current facilities and planned facilities not

this case, the MPUC considered the forecasted need, the available energy resources, and the advantages and disadvantages of utilizing alternative resources. And the MPUC determined that among the options available, the uprate is the most efficient. The MPUC did not err in its determination that the uprate is necessary to meet reasonably predicted demand.

B. Reasonable Alternatives

The community argues that the MPUC failed to adequately consider hydropower as a reasonable and prudent alternative to the uprate. A certificate of need must be granted if the MPUC determines, in part, that “a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence.”

Id. (B). The MPUC must consider the following factors: the appropriateness of the size, the type, and the timing of the proposed facility compared to those of reasonable alternatives; 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; the effects of the proposed facility upon the natural and socioeconomic environments compared to the effects of reasonable alternatives; and the expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives. *Id.* (B) (1)-(4).

The MPUC determined that a more reasonable and prudent alternative does not exist, based on screening analysis conducted by the OES and Xcel concerning the

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. Minn. R. 7849.0120 (A).

feasibility of hydropower. This analysis involved a three-step process that analyzed renewable and nonrenewable energy sources. The first step involved the selection and review of alternative energy sources. The second step consisted of a qualitative screening analysis whereby four criteria were considered to determine if these energy sources were suitable replacements for the uprate. The third step required evaluation of the alternatives that passed the first two screenings using a sophisticated model called Strategist.

The results demonstrate that renewable alternatives would be more expensive, emit more pollutants, and rely more on natural gas and coal generation than the proposed uprate. The analysis also shows that the renewable alternatives might require construction of new generation facilities. This record supports the MPUC's determination that a more reasonable and prudent alternative to the uprate did not exist.

C. Protection of Natural and Socioeconomic Environments, Including Human Health

The community argues that the MPUC erred by determining that the uprate will provide benefits compatible with protecting the natural and socioeconomic environments, including human health. *See id.* (C). In making this determination, the MPUC, relying on the OES's final EIS and the ALJ's findings, weighed the following factors: the overall state energy needs; the effects of the uprate on the natural and socioeconomic environments compared to the effects of not instituting the uprate; the effects of the extended power uprate on inducing future development; and the socially beneficial uses of the uprate, including its uses to protect or enhance environmental quality. *See id.* (C) (1)-(4).

In regard to overall state energy needs, Xcel presented evidence that the uprate will diversify its generation portfolio and protect Xcel from future environmental regulations that impose costs on carbon emissions. In regard to natural and socioeconomic environmental impacts, the MPUC accepted the ALJ's determination that "[n]o socioeconomic or natural environment impacts have been shown to arise from Xcel's proposed extended power uprate." The record evidence shows that the negligible increases in radiation release that will result from the uprate will be indistinguishable from background radiation levels and that the tritium level expected from the uprate will not result in an environmental impact.

In regard to whether the uprate will induce future development, the MPUC adopted the ALJ's finding that the uprate "will help keep energy costs low in the region, helping it attract businesses and maintain steady economic growth." The evidence shows that the plant provides employment that benefits the entire community and that the uprate will provide local, state, and federal tax benefits.

The MPUC also found that the uprate offers socially beneficial uses, including protecting or enhancing environmental quality. The MPUC adopted the ALJ's finding that the "extended power uprate will help to ensure continued reliability of the state electricity system by supplying dependable, low-cost, carbon-free, base load power that could only be reliably replaced by more expensive sources." The MPUC credited the ALJ's finding that the uprate will allow Xcel to avoid increases in fossil fuel prices and future environmental regulations associated with fossil fuels. Finally, the MPUC further

adopted the ALJ's finding that the uprate will help Xcel meet the goals of Minn. Stat § 216H.02, subd. 1, regarding green house gas emissions.

The majority of the community's arguments focus on concerns about the plant as a nuclear-power source, rather than on the benefits of the uprate and the associated impact on the natural and socioeconomic environments, including human health. But the community also argues that the MPUC failed to adequately consider the tritium levels, radiation exposure, and thermal discharge associated with the uprate. The community asserts that tritium, thermal discharge, and radiation are the primary risks associated with the uprate. But the evidence suggesting that these risks cause the uprate to be incompatible with protecting the natural and socioeconomic environments is insubstantial and speculative. The community relies on past tritium releases to argue that the certificate of need must not be granted. However, the community does not refute the evidence showing that the current tritium levels, even those that are elevated, are insufficient to result in environmental impact. While the community may want Xcel to reduce the amount of tritium that is currently released, this is not a basis for the MPUC to deny the certificate of need when the projected levels do not exceed accepted national standards.³

The community contends that the MPUC erred by adopting the ALJ's finding that the slight increase in temperature due to thermal discharge should not negatively affect

³ The community recognizes, in its brief, that the highest recorded level of tritium in a plant well was still only approximately 19% of the limit allowable in drinking water. The EPA sets a maximum contaminant level of 20,000 picocuries per liter for tritium, and plant well P-10 registered a tritium level of 3,773 picocuries per liter in 2006. *See* 40 C.F.R. § 141.66 (2010).

the environment. The community argues that the thermal discharge associated with the uprate has the potential to negatively impact certain bodies of water near the plant. The final EIS considered the potential impact on Lake Pepin. The EIS stated that the results of studies of Lake Pepin's ice thickness from 1981-86 and 1999-2008 indicate that "ice thickness at Lake Pepin does not have any direct correlation to the [plant] operations and that ice thickness at Lake Pepin is a complex phenomenon impacted by meteorological conditions and river flow conditions below the ice." The Minnesota Department of Natural Resources (DNR) expressed concern that these studies did not consider the increase in thermal discharge that would result from the uprate. The DNR suggested that the MPUC require Xcel to conduct additional studies to assess the upper regions of Lake Pepin once the uprate is implemented. Thus, the MPUC's order requires Xcel to study and prepare a report on the effect of thermal discharge on Lake Pepin.

The community also contends that the MPUC erred by adopting the ALJ's finding that the slight increase in radiation associated with the proposed uprate is compatible with protecting the environment, including human health. The final EIS reported that the uprate will likely result in an increase of radiological doses by ten percent. Even with this increase, the evidence shows that the doses will remain within federal regulations and be indistinguishable from background radiation levels. The final EIS also concluded that projected increase in both off-site gaseous and liquid effluents will remain well below the levels established by NRC regulations.

Moreover, the MPUC's order granting the site permit contains several requirements that ensure protection of natural and socioeconomic environments. For

example, Xcel must fully implement the objective and criterion set forth in the Nuclear Energy Institute's Groundwater Protection Initiative by April 30, 2010; provide detailed written reports quarterly to the community, the City of Red Wing, and the MDH, including information from well monitoring in and around the plant and summarizing material information discovered as it implements and maintains each subpart of the initiative; discontinue discharging liquid waste into landlocked areas; and conduct a comprehensive surface investigation in and around wells P-10, MW-7, and MW-8, and consider the installation of other monitoring wells in and around the area of wells MW-7 and MW-8. The MPUC also ordered Xcel to file a report regarding the effect of thermal discharge on Lake Pepin. The report will review the analysis of previous studies and current data and propose a plan of action. Xcel is required to seek advice from the Minnesota Pollution Control Agency if the MPUC finds the initial report insufficient.

The MPUC rejected the community's proposal for a genetic study of the effects of the radiation, concluding that such a study is unnecessary. The record contains reference to an MDH study concluding that there is no significant additional cancer risk associated with living near the plant. And because the use of gene expression to establish an environmental health and safety baseline has not yet been established, the MPUC, relying on the ALJ's findings, found that the genetic testing requested by the community would not identify with certainty any potential health impacts arising from low-dose radiation exposure.

The MPUC's assessment of the consequences of various tritium, radiation, and thermal-discharge levels involved highly technical issues, the resolution of which

requires significant expertise. Decisions of administrative agencies are presumed to be correct and to have been based on the application of the expertise necessary to decide technical matters that are within the scope of the agencies' concerns and authority. *Universal Underwriters*, 685 N.W.2d at 45-46. In this case the MPUC received hundreds of documents and heard arguments regarding the community's concerns and concluded that the uprate is not at odds with the protection of the natural and socioeconomic environments, including human health. The resulting findings are supported by the evidence and indicate that the MPUC took a "hard look" at the issue. On this record we discern no basis to set aside the MPUC's determination on this issue. *Cf. Yellowbird, Inc. v. MSP Express, Inc.*, 377 N.W.2d 490, 493 (Minn. App. 1985) (stating, "[w]here there is a combination of danger signals which suggest the agency has not taken a hard look at the salient problems and has not genuinely engaged in reasoned [decision-making] it is the duty of the court to intervene" (quotations omitted)).

D. Compliance with Relevant Policies, Rules, and Regulations of Other State and Federal Agencies and Local Governments

The MPUC was required to determine whether the proposed uprate will fail to comply with relevant polices, rules, and regulations of other state and federal agencies and local governments. Minn. R. 7849.0120 (D). The community argues that the MPUC erred in its determination because Xcel did not prove that it will obtain renewal of the requisite federal licenses and because the uprate will cause an unacceptable increased risk of cancer exposure in contravention of Minnesota law.

The community argues that the MPUC's approval of the certificate of need is premature because the necessary, attendant NRC license renewal and amendments to the plant's operating license will not be completed until more than a year after the certificate of need was issued. But the rule does not require full compliance with relevant policies, rules, and regulations prior to the issuance of a certificate of need. Instead, Minn. R. 7849.0120 (D) instructs the MPUC to approve a certificate of need if, "the record does not demonstrate that the design, construction, or operation of the proposed facility, or a suitable modification of the facility, will fail to comply with relevant policies, rules, and regulations of other state and federal agencies and local governments." No evidence suggests that the uprate will not comply with relevant policies, rules, and regulations. Moreover, if the NRC does not approve Xcel's operating license, the uprate will not be implemented.

The community also argues that the uprate will exceed MDH limits on the acceptable levels of cancer risk. The MDH has promulgated various rules governing the standards of protection for radiation. Minn. R. 4731.1000-.2950 (2009). However, these limits do not apply to radioactive materials associated with nuclear-power production because the NRC is the agency with the authority to regulate radiation doses from nuclear-power plants and spent fuel storage facilities. *See* Minn. R. 4731.0200, subp. 1(B) (2009) ("Nothing in this chapter applies to a person to the extent that the person is subject to rules of the NRC or to sources in the possession of federal agencies"). The ALJ heard testimony that, while Minnesota has the authority to regulate certain radioactive materials, this does not extend to radioactive materials associated with

nuclear power production because the NRC regulates in this area. Therefore, the standards of protection for radiation in rule 4731 do not apply to the plant and are not “relevant policies, rules, and regulations of other state and federal agencies and local governments” for the purpose of Minn. R. 7849.0120 (D).

The evidence shows that the radiation emissions from the plant at its proposed operating level will be significantly below the NRC radiation dose limits. Moreover, Xcel has a comprehensive radiation monitoring program in place at the plant that complies with NRC radiation-monitoring requirements. Additionally, the record shows that radiation exposures to plant personnel have decreased over time. Therefore, the MPUC correctly determined that the record does not show that the uprate will fail to comply with relevant polices, rules, and regulations of other state and federal agencies and local governments.

The community has not demonstrated that the MPUC’s decision was in excess of its statutory authority, affected by errors of law, unsupported by substantial evidence, or arbitrary and capricious. And there is no reason to forgo the deference that this court is bound to apply when reviewing an agency decision. *See Universal Underwriters*, 685 N.W.2d at 45-46. Therefore, the decision of the MPUC is affirmed.

Affirmed.

Dated:

Judge Michelle A. Larkin