

September 12, 2017

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101

RE: **Response Comments of the Minnesota Department of Commerce, Division of Energy Resources**
Docket No. E002/M-17-561

Dear Mr. Wolf:

Attached are the response comments of the Minnesota Department of Commerce, Division of Energy Resources (Department) in the following matter:

Petition of Northern States Power Company, doing business as Xcel Energy (Xcel), for Approval of a Power Purchase Agreement (PPA) with Dragonfly Solar, LLC

Xcel filed the Petition on July 21, 2017; the Department filed comments on August 31, 2017; and Xcel filed reply comments on September 8, 2017.

The Department recommends approval of Xcel's Petition as modified in Xcel's reply comments and is available to respond to any questions the Minnesota Public Utilities Commission may have.

Sincerely,

/s/ STEPHEN COLLINS
Rates Analyst

SC/lt
Attachment



Before the Minnesota Public Utilities Commission

Response Comments of the Minnesota Department of Commerce Division of Energy Resources

Docket No. E002/M-17-561

I. BACKGROUND

Xcel Energy's (Xcel's) July 21, 2017 petition (Petition) for approval of a 15-year, 0.8 MW solar power purchase agreement (PPA) with Dragonfly Solar, LLC (Dragonfly) requested that the Minnesota Public Utilities Commission (Commission):

1. Approve the PPA,
2. Find that the PPA is a resource that can be used by Xcel to satisfy the Solar Energy Standard set forth in Minn. Stat. § 216B.1691, subd. 2f, and
3. Authorize cost recovery for the PPA through Xcel's Fuel Clause Adjustment pursuant to Minn. Stat. § 216B.1645.

The Minnesota Department of Commerce, Division of Energy Resource (Department) submitted comments on August 31, 2017 recommending that the Commission grant the second and third requests, and grant the first request contingent on Xcel either providing more information or modifying certain terms of the PPA. Specifically, the Department recommended approval of the PPA contingent on Xcel:

- Eliminating the \$35,000 limitation on replacement energy costs and other damages in section 7.4(c); or, alternatively, explaining why it included the limitation and how the limitation adequately protects ratepayers; and
- Modifying sections 4.4(a) and 4.4(b) by adding additional language (specified in the Department's initial comments) to ensure transfer of ownership would not hinder Dragonfly or a successor seller's ability to perform its obligations under the PPA; or, alternatively, adequately explaining how the unmodified language in sections 4.4(a) and 4.4(b) protects ratepayers in the event of a sale of assets.

Xcel submitted reply comments on September 8, 2017. The reply comments agreed to the modifications in the Department's August 31, 2017 comments, except for the modification to section 4.4(b), which was as follows:

4.4(b) Notwithstanding any provision in this agreement to the contrary, the members of Seller may sell or transfer any of their membership interest in Seller to any Person in accordance with the governing documents of Seller ~~without~~ **with** NSP's consent, **which shall not be unreasonably withheld, receipt of which will be contingent upon Seller's demonstration to NSP's satisfaction that the proposed changes will not adversely affect the ability of Seller or any successor entity to perform its obligations under this Agreement**, unless the sale or transfer constitutes a Change of Control requiring a PFT Notice pursuant to Section 9.2. [Department initial comment's proposed changes relative to the version originally proposed by Xcel in the Petition are in bold]

Instead, Xcel proposed an alternative modification to section 4.4(b), which addressed Dragonfly's concerns about Xcel having veto power over minority (less than 50%) ownership changes in the solar project, but in Xcel's view still addressed the concerns expressed in the Department's initial comments about protecting ratepayers against non-performance:

4.4(b) Notwithstanding any provision in this Agreement to the contrary, the members of Seller may sell or transfer any of their membership interests in Seller ~~to any Person without NSP's consent if the transaction is (i) solely among existing members~~ in accordance with the governing documents of Seller ~~without NSP's consent, unless the sale~~ or **(ii) to a tax equity investor which is not assuming any active control or management of the Facility, provided that Seller notifies NSP of the transfer constitutes within ten (10) days of closing. The members of Seller may transfer any of their membership interests in Seller to a third party, the effect of which does not otherwise constitute a Change of Control requiring a PFT Notice pursuant to Section 9.2, with the consent of NSP, which shall not be unreasonably withheld, receipt of which shall be contingent upon Seller's demonstration to NSP that the proposed changes will not adversely affect the ability of Seller to perform its obligations under this Agreement.** [Xcel reply comment's proposed changes relative to the version originally proposed by Xcel in the Petition are in bold. A non-tracked-change version of Xcel's proposed modification is on page 3 of Xcel's reply comments.]

II. DEPARTMENT ANALYSIS

The purpose of the proposed change to section 4.4(b) in the Department's initial comments was to assure transfers of ownership (amongst the owners of Dragonfly) do not affect Dragonfly's ability to perform its obligations under the PPA. Under the modifications proposed in Xcel's reply comments, transfers of ownership could occur without such assurances in only two instances: (i) when current owners shift ownership amongst themselves, and (ii) if the investor is a tax equity investor without active control of management of the solar facility. The

Department concludes that the risk of nonperformance due to a transfer of ownership in either of these two instances is negligible. Therefore, the Department does not oppose the modification to section 4.4(b) proposed by Xcel's reply comments.

III. DEPARTMENT RECOMMENDATIONS

The Department recommends that the Commission:

- Approve the PPA as modified by Xcel in its September 8, 2017 reply comments;
- Find that the PPA is a resource that can be used by Xcel to satisfy the Solar Energy Standard; and
- Authorize recovery through Xcel's fuel clause adjustment of the Minnesota jurisdictional costs of the PPA, net of any offsystem revenues Xcel receives due to the PPA.

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