



414 Nicollet Mall
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October 14, 2019

Mr. Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101-1247

RE: INITIAL COMMENTS
2019 COGENERATION AND SMALL POWER PRODUCTION
DOCKET NO. E999/PR-19-9

Dear Mr. Wolf:

Northern States Power Company, doing business as Xcel Energy, submits to the Minnesota Public Utilities Commission these initial comments in response to the Commission's August 30, 2019 NOTICE OF SUPPLEMENTAL COMMENT PERIOD in the above-referenced docket.

INITIAL COMMENTS

A. Minnesota Power, Otter Tail Power, and Xcel Energy revised 2019 annual cogeneration and small power production filings with the data each utility has proposed to make public and the rationale for these changes to trade secret designation.

The rationale for the changes to trade secret designation was explained in our September 10 filing.

B. Provide further explanation of how the specific information claimed to be trade secret does or does not qualify as trade secret under the Data Practices Act, Minnesota Statute Chapter 13.

The specific information marked as protected data includes forward-looking cost information as set forth in our September 10 filing in Attachment A (pages 2 and 3), and in Attachment B (pages 1 and 12). It also includes costing information from third-party vendors for specific units in Attachment B (pages 2, Units 2 and 3).

The specific information so marked includes data specific to the Company's Black Dog plant (Unit 1) and Company wind (Unit 4) in Attachment A (page 4) and in Attachment B (pages 2 and 13).

The specific information further includes data specific to predicted pricing for future generation in Attachment B (page 2, Units 5 and 6).

Trade secret protection is sought pursuant to Minn. Stat. § 13.37 for all of the information marked as protected data. In particular, release of this information would undermine the Company's resource bidding process by providing potential suppliers with a compilation of competitive information that derives independent economic value from not being generally known or ascertainable. This information includes data regarding costs of energy from possible new generating facilities that is not otherwise public. Disclosure of this information could result in higher costs of energy for Xcel Energy customers by allowing potential suppliers to modify their pricing from what they would otherwise bid. Further, as explained in the February 22 and March 18 filings of Xcel Energy in this matter, the Company and its third-party vendors have taken steps to protect the confidentiality of the designated protected information. This includes cost and related information on specific operating plants, and some of these plants are owned by third parties. Also, the forward looking data in Schedule A is obtained through a subscription service from a third-party and is protected and cannot be publicly released. Therefore, the Company has designated certain portions of this filing as trade secret.

C. Is any of the specific, trade secret-designated information required by Minnesota rules under part 7835.0500 (Schedule A); part 7835.0600 (Schedule B); and part 7835.1000 (Schedule G) not required by PURPA?

PURPA on this issue has been implemented in part by 18 CFR §292.302. This rule allows for two alternative methods of compliance – under 18 CFR §292.302(b) or under 18 CFR §292.302(d). The rule under 18 CFR §292.302(d) allows states to have a “substitution of alternative method” under which the electric utility may provide “... data different than those which are otherwise required by this section [(under 18 CFR §292.302(b))] if it determines that avoided costs can be derived from such data.” The state rules and our compliance are consistent with 18 CFR §292.302(d). Since this rule allows states to determine what data is needed to comply with PURPA on this issue, the data is consistent with PURPA but is different from what is set forth in 18 CFR §292.302(b).

D. Discuss the ‘public inspection’ requirement under PURPA and Minn. Rules 7835.1200 and whether that can be satisfied by granting developers interested in providing generation as qualifying facilities (QFs), and their consultants and advisors, access to the data required by the rules under a Commission-approved nondisclosure agreement.

We adopt the explanations provided in our February 22, 2019 and March 18, 2019 comments that state and federal statutes provide for the non-public filing of the specific information at issue here and these statutes prevail over any conflicting administrative rules.

Further, while in concept a NDA can be used in some circumstances to share data, the data should not be shared until the developer provides an appropriate reason as to why it needs the data. For example, idle curiosity would not be a valid reason. It appears that a valid reason would be that the developer is solely engaged in supporting net metering under our tariffed net metering rates and wants to vet whether the calculations are reasonable. But, even then, providing this information under a NDA would not be appropriate if the developer plans or might at any time in the next five years bid on a RFP issued by the Company, sell directly into the MISO market, or engage in market trading of energy or capacity. In these circumstances, the developer either would be competing against the Company, risk harming ratepayers or third parties, and would be using non-public Company information to do so. These restrictions should also apply to any employee of the developer who has access to the data. No such employee who has access to this data for a period of five years should be able to 1.) prepare or assist in preparing a bid on a RFP issued by the Company, 2.) selling or assist in selling directly into the MISO market, or 3.) engage or assist in engaging in market trading of energy or capacity.

Similarly, even if there is a NDA, the non-public information should not be viewable by a developer’s consultant or advisor if the consultant or advisor plans or might at any time in the next five years provide consultation or advice for itself or for any entity relating to any of the following: 1.) bidding on a RFP issued by the Company, 2.) selling directly into the MISO market, or 3.) engaging in market trading of energy or capacity.

Further, even with a NDA, where third-party confidential information is at issue, that third-party confidential information should not be released until

there has been consent from the third party and upon conditions required by that third party.

We have electronically filed this document with the Commission and copies have been served on all parties on the attached service list. Please contact me at james.r.denniston@xcelenergy.com or 612-215-4656 if you have any questions regarding this matter.

Sincerely,

/s/

JAMES R. DENNISTON
ASSISTANT GENERAL COUNSEL

c: Service List

CERTIFICATE OF SERVICE

I, Jim Erickson, hereby certify that I have this day served copies of the foregoing document on the attached list of persons.

xx by depositing a true and correct copy thereof, properly enveloped with postage paid in the United States mail at Minneapolis, Minnesota;

xx electronic filing

Docket No. E999/PR-19-9

Dated this 14th day of October 2019

/s/

Jim Erickson
Regulatory Administrator

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