

August 2, 2019

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/PA-18-777

Dear Mr. Wolf:

On July 11, 2019, the Minnesota Public Utilities Commission (Commission) issued a Notice of Comment Period (Notice) in this docket. The Minnesota Department of Commerce's, Division of Energy Resources (Department) Response Comments to that Notice are attached.

The Commission identified four topics as open for comment in its Notice:

- Should the Commission approve the request of Northern States Power Company dba Xcel Energy (Xcel or the Company) for approval of the acquisition, ownership, and operation of the Community Wind North (CWN) Facilities and the Jeffers Wind Facility pursuant to the terms of a negotiated purchase agreement?
- If the acquisition is approved, should the Commission authorize Xcel to recover the cost of purchasing the CWN and Jeffers Wind Facilities through its Fuel Clause Rider?
- Alternatively, should the Commission approve Xcel's proposed amendments to existing Purchase Power Agreements (REPAS) for the CWN and Jeffers Wind Facilities?
- Are there any other issues or concerns related to this matter?

The Department continues to recommend that the Commission **approve Xcel's proposed amendments to the purchase power agreements (REPAS)** that Xcel has negotiated with Longroad Energy for the Community Wind North and Jeffers Wind Facilities. The Department does not recommend approval of Xcel's proposed acquisition of the facilities.

Sincerely,

/s/ JOHN KUNDERT
Financial Analyst

JK/ja
Attachment



Before the Minnesota Public Utilities Commission

Comments of the Minnesota Department of Commerce Division of Energy Resources

Docket No. E002/PA-18-777

I. BACKGROUND

Northern States Power, d/b/a Xcel Energy (Xcel or the Company) filed a request for approval (Petition) of the purchase of three existing sets of wind generation facilities on December 21, 2018. The Petition was relatively complicated procedurally in that it included a preferred request as well as a secondary request.

Xcel's primary request was that the Commission approve the Company's exercise of an option to purchase (Option, OtP) the facilities covered by the three existing purchase power agreements (PPA's).^{1,2} Xcel also requested approval of the acquisition and operation of the facilities pursuant to the terms of a negotiated purchase agreement that was then still under negotiation. The Company stated in the Petition that it anticipated executing an agreement or agreements in the near future. Xcel also stated that it would make a supplemental filing that contained the "final purchase and sales terms once finalized".³

The Company also included a second alternative that consisted of amending the three existing PPA's (which Xcel calls Wind Generation Purchase Agreements or REPA) that would lower the price Xcel pays LongRoad Energy (LE) for the energy purchased from the three facilities by approximately 5 percent.⁴ Those amendments were identified as the *Third Amendment of Jeffers Power Purchase Agreement* (Jeffers Amendment), which proposes changes to the Jeffers PPA and the *First Amendments of North Community Turbines and North Wind Turbine PPAs*, respectively.

The Department filed its Comments on March 25, 2019. We supported the option of amending the PPAs, stating:

¹ On November 30, 2006 in Docket No. E0002/M-06-1234 the Minnesota Public Utilities Commission (Commission) issued an approval of Xcel Energy's (Xcel, Company) petition regarding a Purchase Power Agreement (PPA) between Xcel and Jeffers Wind 20, LLC for the purchase of energy from this 50-megawatt (MW) nameplate capacity project (Original Jeffers PPA).

² On August 26, 2010 in Docket No. E002/M-10-734 the Commission issued an Order approving Xcel Energy's (Xcel, Company) petition for two PPAs with North Wind Turbines, LLC and North Community Turbines LLC. Xcel agreed under these two PPA's to the purchase of the energy from this 30 MW nameplate capacity from these two projects.

³ Petition at page 8.

⁴ LongRoad Energy owns both facilities.

As explained in detail above, Xcel did not demonstrate that its proposal to purchase the Jeffers and Community Wind North facilities (the OtP alternative) is reasonable, but did demonstrate that the proposed amendments to the PPAs (the REPA alternative) is reasonable. Thus, the Department recommends that the Commission approve Xcel's proposed amendments to the existing PPAs.

The Department raised these concerns:

- Xcel did not identify Minn. Stat. §216B.50 or provide the information required by Minnesota Rule 7825.1400 as legal support for its request to purchase the facilities;
- Xcel did not provide support for the exemption of these contracts from the competitive generation process;
- Xcel did not justify the approval of significant resource acquisition adjustments included in the proposed purchase prices; and
- Xcel did not explain why its request that the Commission approve its proposed option to purchase is preferable to the Commission requiring Xcel to file executed purchase agreements for Commission review prior to allowing for recovery of the purchase price.

Xcel filed its Reply Comments on April 12, 2019. The Company provided two purchase and sale agreements for the facilities in question that were executed March 27, 2019. Those two purchase/sale agreements resolved the Department's final concern listed above.

II. DEPARTMENT ANALYSIS

The Department considers the following three perspectives in these Response Comments:

- Legal/Procedural issues;
- Accounting issues, and
- Financial issues.

We also address the question of cost-recovery the Commission identified in its Notice in the Financial section.

A. LEGAL/PROCEDURAL ISSUES

1. *Applicability of Minnesota Statutes § 216B.50*

The Department noted in its initial Comments that the Company did not request approval under Minn. Stat. § 216B.50 even though that appeared to be the applicable statute in this instance.

Xcel explained in its Reply Comments:

Although we acknowledge that we did not explicitly request approval under Minn. Stat. § 216B.50 or request a variance from, or otherwise specifically discuss, the filing requirements provided in Minn. R. 7825.1800, we believe the analysis we presented provides the information necessary for the Commission to find the Company's proposed acquisition of Jeffers and Community Wind North to be in the public interest and to approve the transaction.

Minn. Stat. § 216B.50 states: "No public utility shall sell, acquire, lease or rent any plant as an operating unit or system in this state for a total consideration in excess of \$100,000 . . . without first being authorized to do so by the Commission".

The Department agrees with Xcel's conclusion that Minn. Stat. § 216B.50 applies to the Petition. We also note that the statute directs the Commission to determine "that the proposed action is consistent with the public interest."

2. Information Requirements

Minnesota Rules 7825.1800, subpart B requires the Company to provide various information set forth in Minnesota Rules 7825.1400 for a property transfer. In its Reply Comments, Xcel requested that the Commission waive application of Minnesota Rules 7825.1800, subp. B. The Company noted that the Commission has previously granted a variance to the requirements to provide the information outlined under Minnesota Rules 7825.1400 (A) to (J) in proposed acquisition of property transactions. Minnesota Rules 7829.3200 allows the Commission to vary its rules if the Commission finds:

- A. Enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- B. Granting the variance would not adversely affect the public interest; and
- C. Granting the variance would not conflict with standards imposed by law.

Xcel's analysis of the variance requirements is as follows;

- Excessive burden – the proposed transaction does not implicate the information sought by Minn. R. 7825.1400 (A)-(J) and would impose an excessive burden on the Company as a result.
- Public interest – Granting the variance does not conflict with the public interest in that the proposed transaction does not involve the issuance of securities;
- Standard imposed by law – as evidenced by previous Commission precedent, a waiver will not violate any standards imposed by law.

Given the facts in this proceeding, the Department concludes that Xcel did not justify the requested variance, since there would be public harm in not providing the information required in Minnesota Rule 7825.1400. Specifically, items G through J would be important:

- G. Copies of resolutions by the directors authorizing the petition for the issue or assumption of liability in respect to which the petition is made; and if approval of stockholders has been obtained, copies of the resolution of the stockholders shall be furnished.
- H. A statement as to whether, at the time of filing of the petition, the petitioner knows of any person who is an "affiliated interest" within the meaning of Minnesota Statutes, section 216B.48, subdivision 1, who has received or is entitled to receive a fee for services in connection with the negotiations or consummation of the issuance of the securities, or for services in securing underwriters, sellers, or purchasers of the securities.
- I. A signed copy of the opinion of counsel in respect to the legality of the issue or assumption of liability.
- J. A balance sheet dated no earlier than six months prior to the date of the petition together with an income statement and statement of changes in financial position covering the 12 months then ended. When the petitions include long-term securities, such statements shall show the effects of the issuance on such balance sheet and income statement.

This information would provide more information about the liabilities involved in acquiring the asset. Examples of liabilities – to which ratepayers would be exposed under the purchase/sale option – include equipment failures, costs of decommissioning the site or other factors.

B. ACCOUNTING ISSUES

We noted in our initial Comments:

- Xcel's identified purchase prices for the acquisition of the Jeffers and Community Wind North wind facilities respectively, contained large acquisition adjustments.⁵
- Acquisition adjustments are on top of the net book value and as a result require a significant finding of benefits to offset or justify this higher acquisition adjustment or premium before rate recovery is allowed.
- Competitive bidding would be a way to ensure that the acquisition adjustment or premium is reasonable.

⁵ Acquisition adjustment in this instance is defined as "a premium paid for acquiring an asset for more than its book value."

The Company's responded:

Although the Department correctly notes that FERC accounting rules require the Company to record the plant's net book value separately from the remainder of the purchase price (*i.e.* the "acquisition adjustment"), those rules simply provide the accounting standards to compare net book value to market value. They are not rules regarding the recovery of costs, and they do not preclude the Company from recovering the total amount of the investment. . . . Market conditions change over time, and there is little reason to assume that fair market value for a plant should be tied to net book value. Net book value reflects only the original cost to construct a plant, less depreciation – not what a plant might be valued at in today's market. A plant's value is a product of its generating characteristics, its expected life, its operating costs, and its projected revenues either from PPAs or expected market sales among other things.

Xcel also cited language from an Order "In the Matter of the Application of Minnegasco, a Division of NorAm Energy Corp., for Authority to Increase Its Natural Gas Rates in Minnesota, Findings of Fact, Conclusions of Law, and Order, Docket No. G008/GR-95-700 (June 10, 1996)" (95-700 docket) at page 37.

The ALJ (administrative law judge) summarized those conditions as (a) a utility must demonstrate benefits to ratepayers; (b) the benefits would not have occurred but for the acquisition; (c) the benefits to ratepayers are greater than the cost of the acquisition adjustment, and d) there will be ongoing ratepayer benefit realized over time.

The Department notes that the Minnegasco case is not on point to the set of facts in this case. For example, the Minnegasco acquisition involved acquisition of an asset that wasn't already providing service to the utility; by contrast, the wind facilities in Xcel's petition are assets that are already providing service to Xcel's ratepayers under the REPA contracts.

Thus, the issue to be decided in this proceeding is not whether the facilities should provide service to Xcel's ratepayers – the facilities already provide service under the existing power purchase agreements and would continue to provide service under REPAs. Instead, the issue to be decided is whether the REPA contracts should be converted to Xcel's ownership of the facilities.

C. FINANCIAL ANALYSIS

The Company concluded that the acquisition of the two wind facilities would be in the public interest because it "benefits customers and places them in a better position than they would be were we to continue with either the existing or amended REPAs."⁶

⁶ Petition at pages 9 and 10.

The Department noted in our Comments dated March 25, 2019 that the Strategist modeling was very complex. While the Department did not conduct the same audit of Xcel’s Strategist modeling as in the concurrent docket in which Xcel seeks to convert another PPA to utility ownership of the asset (Docket No. E002/PA-18-702), it is reasonable to expect that Xcel would have used the same Strategist modeling in its analysis in this Petition. As such, the Department refers to its March 5, 2019 Comments and July 26, 2019 Supplemental Comments in Docket No. E002/PA-18-702 for the extensive list of concerns about Xcel’s Strategist modeling and concludes that the Company’s Strategist analysis should not be used as the basis to approve Xcel’s petition.⁷

The modeling issues identified in Docket No. E002/PA-18-702 aside, the Department did review the revised cost/benefit analyses related to the two transactions that the Company included in their Reply Comments. Xcel has portrayed the acquisition of the Jeffers and CWN facilities as being a “bundled” transaction in the Petition. The Department’s review of the two proposed contracts did not identify any language that required that the two facilities be purchased simultaneously. Thus, the Department decided to review the Company’s analysis of the two agreements individually.

The Department does not agree that the Community Wind North purchase/sale agreement benefits ratepayers. Table 1 summarizes the scenarios Xcel identified for the proposed Community Wind North (CWN) acquisition.

Table 1 – Incremental PVRR and PVSC Benefits Resulting from Community Wind North Amended PPA/Acquisition (in \$ millions of 2018 Dollars)

	CWN				
	Scenario	PVRR	Delta	PVSC	Delta
1.	Own CWM - 20 Year Life	\$ 44,903.40	\$ -	\$ 55,657.00	\$ -
2.	PPA - Repower CWN	\$ 44,902.60	\$ (0.80)	\$ 55,655.50	\$ (1.50)
3.	Own CWM - 20 Year Life	\$ 44,907.70	\$ 4.30	\$ 55,656.20	\$ (0.80)
4.	Own CWM - 25 Year Life	\$ 44,904.30	\$ 0.90	\$ 55,650.70	\$ (6.30)
5.	Own CWM - 30 Year Life	\$ 44,902.40	\$ (1.00)	\$ 55,647.20	\$ (9.80)

Two of the four scenarios modeled in Table 1 identify ratepayer benefits from a PVRR perspective. An amended PPA with LE for the CWN facility identified a \$0.8 million in PVRR benefit. In addition, an acquisition that assumed a 30-year turbine life also identified a \$1.0 million PVRR ratepayer benefit.

Two of the four scenarios modeled in Table 1 do not identify ratepayer benefits from a PVRR perspective. The 20 and 25-year turbine lives scenarios calculated a cost to ratepayers of \$4.3 or \$0.9 million. Thus, the Department concludes that the proposed CWM acquisition would not be in the public interest.

⁷ The overall conclusion in that proceeding about Xcel’s modeling was that “the numerous flaws in Xcel’s Strategist inputs and modeling technique render all four rounds of the Company’s analysis to be of no **value**.” (emphasis in original), Department’s July 26, 2019 Supplemental Comments in Docket No. E002/PA-18-702, page 52.

Given that ratepayers could achieve \$0.8 million in PVRR benefits simply by amending the existing PPA, the Department considered that scenario to be the new base scenario for evaluating this criterion. Table 2 summarizes this information.

**Table 2 – Incremental PVRR and PVSC Benefits Resulting from CWN Acquisition
 (In \$ millions of 2018 Dollars)**

Line No.	CWN Scenario	PVRR	Delta	PVSC	Delta
1.	PPA - Repower CWN	\$ 44,902.60		\$ 55,655.50	
2.	Own CWM - 20 Year Life	\$ 44,907.70	\$ 5.10	\$ 55,656.20	\$ 0.70
3.	Own CWM - 25 Year Life	\$ 44,904.30	\$ 1.70	\$ 55,650.70	\$ (4.80)
4.	Own CWM - 30 Year Life	\$ 44,902.40	\$ (0.20)	\$ 55,647.20	\$ (8.30)

Similar to the above, the 20 and 25-year turbine life CWN scenarios demonstrate estimated net costs, not benefits to ratepayers. The costs of \$5.1 and \$1.7 million suggest that this acquisition is not favorable for ratepayers from a PVRR perspective. The results of the 30-year turbine life scenario supports this perspective as well. The benefits identified are only \$200,000.

In addition, Xcel still did not justify requiring ratepayers to pay a significant acquisition premium for purchase of the assets. Moreover, Xcel did not request a variance to the rules or identify the risks to which ratepayers would be exposed if the assets were purchased, as noted above. For similar reasons, the Department does not recommend approval of the proposed acquisition of the Jeffers facility.

As noted and demonstrated in the Department’s March 25, 2019 Comments, the results of Xcel’s Strategist analysis is sensitive to differences in assumptions, such as the lives of the facilities. If the facilities fail at 20 years, for example, the net effect of Xcel’s proposal to own the facilities would be a cost to ratepayers, not a benefit. Ratepayers would be protected from such a risk under the REPA alternative, along with risks of having to decommission the facilities. Moreover, it is possible that even less expensive wind resources would be available in the future.

Thus, the Department recommends that the Commission deny Xcel’s proposed sale/purchase of both facilities.

Cost Recovery

The Commission also asked parties to address the question of cost recovery if the Commission were to approve Xcel’s acquisition. The cost recovery mechanism for the Department’s recommended option

would be the same as the current cost recovery option. Xcel's payments to LE under the REPAs would be recovered through the Fuel Clause Rider.

As to cost recovery under the acquisition alternative, the Department assumed those costs would be included in the Company's upcoming general rate case. If that is not the case, then we would ask Xcel to explain its proposed recovery mechanism in written comments or before the Commission.

III. DEPARTMENT RECOMMENDATION

The Commission identified four topics as open for comment in its July 11, 2019 Notice:

- Should the Commission approve the request of Northern States Power Company dba Xcel Energy (Xcel or the Company) for approval of the acquisition, ownership, and operation of the Community Wind North (CWN) Facilities and the Jeffers Wind Facility pursuant to the terms of a negotiated purchase agreement?
- If the acquisition is approved, should the Commission authorize Xcel to recover the cost of purchasing the CWN and Jeffers Wind Facilities through its Fuel Clause Rider?
- Alternatively, should the Commission approve Xcel's proposed amendments to existing Purchase Power Agreements (REPAs) for the CWN and Jeffers Wind Facilities?
- Are there any other issues or concerns related to this matter?

The Department continues to recommend that the Commission approve Xcel's proposed amendments to the purchase power agreements that Xcel has negotiated with Longroad Energy for the Jeffers and Community Wind North facilities (REPAs). The Department does not recommend approval of Xcel's proposed acquisition of the facilities, for all of the reasons discussed above. If the Commission approves the REPA alternative, the costs associated with those power purchase agreements should continue to be recovered through the Fuel Clause Rider.

/ja

CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce
Response Comments**

Docket No. E002/PA-18-777

Dated this **2nd** day of **August 2019**

/s/Sharon Ferguson

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