

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Nancy Lange	Chair
Dan Lipschultz	Commissioner
Matthew Schuerger	Commissioner
Katie J. Sieben	Commissioner
John A. Tuma	Commissioner

In the Matter of Xcel Energy’s Petition for Approval of an Amendment to the Hennepin Energy Recovery Center Power Purchase Agreement

ISSUE DATE: December 28, 2017

DOCKET NO. E-002/M-17-532

ORDER REJECTING PROPOSED AMENDMENT TO POWER PURCHASE AGREEMENT

**PROCEDURAL HISTORY**

On June 30, 2017, Xcel Energy (Xcel or the Company) filed a petition for approval of an amendment extending its agreement with Hennepin County (the County) to purchase the electricity generated by the County’s waste-to-energy facility (the Hennepin Energy Recovery Center, or “HERC”).

On August 2, the Minnesota Department of Commerce (the Department) filed comments recommending that the Commission take no action on Xcel’s petition. It contended that the proposed price was too high and therefore recommended that Xcel pursue arbitration with the County to determine a fair market value.

On August 14, Xcel and the County filed reply comments. Both opposed referring the matter for arbitration, arguing that the price they had negotiated was reasonable and that arbitration could result in a higher price.

On September 11, the Department revised its position, recommending that the Commission approve the amendment with conditions.

The Commission also received comments from three members of the public: Alan Muller, Carol Overland, and Eureka Recycling. These commenters raised concerns about the cost of HERC’s power and the environmental consequences of burning solid waste to generate electricity.

On November 16, the matter came before the Commission.

## FINDINGS AND CONCLUSIONS

### I. Background

The Hennepin Energy Recovery Center is a waste-to-energy facility that generates steam and electricity by burning solid waste.

In 1986, Xcel entered into a power purchase agreement (PPA) whereby the Company agreed to purchase the electricity generated by HERC for a term of 28 years.<sup>1</sup> The PPA took effect in January 1990 and expires on December 31, 2017.

The PPA provides that “[i]f Seller decides to continue to operate the plant after the first 28 years, [Xcel] will purchase the electrical output . . . at its fair market value to [Xcel] at the time it is offered, for up to an additional seven years.”<sup>2</sup> And it requires that any unresolvable dispute between the parties concerning the PPA be settled through binding arbitration.

In January 2017, Xcel and the County began formally negotiating an extension of the HERC PPA. And in June, Xcel presented the Commission with a proposed amendment.<sup>3</sup>

The proposed amendment would extend the PPA by seven years and would also change how Xcel’s payments are calculated. Under the existing PPA, energy and capacity are priced separately according to formulas set forth in the agreement. Under the PPA as amended, Xcel would pay a single price per megawatt-hour (MWh) delivered for both energy and capacity (an arrangement known as “all-in pricing”).

### II. Positions of the Parties

#### A. Xcel and the County

Xcel and the County maintained that the PPA amendment’s price was appropriate for several reasons.

Xcel acknowledged that the proposed price was “somewhat higher than current market estimates for energy and capacity.” However, it stressed that the overall cost of the HERC PPA over the next seven years would be lower under the proposed amendment than under the current, unamended agreement. Xcel disclosed that it expects the proposed PPA pricing to save

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<sup>1</sup> *In the Matter of the Petition of Hennepin Energy Resource Company, Limited Partnership for an Order Resolving the Disputes Relating to the Purchase by Northern States Power Company of Energy and Capacity from the Operation of a Solid Waste Recovery Facility Located in Hennepin County, Minnesota*, Docket No. E-002/CI-86-176, Resource Recovery Electric Sale Agreement Between Northern States Power Company and County of Hennepin (July 11, 1986) (filed as “Other—Settlement Agreement”) [hereinafter “HERC PPA”].

<sup>2</sup> HERC PPA § 7.13.

<sup>3</sup> Xcel’s June 30 petition, Attachment A [hereinafter “First Amendment to the HERC PPA”].

approximately \$27 million compared to the existing pricing methodology over the seven-year extension period.<sup>4</sup>

The County stressed HERC's importance to the community and the County's importance to Xcel as a major customer. And it asserted that HERC's location within the Minneapolis–Saint Paul metropolitan area—an area with high electricity demand—brings unique value by avoiding transmission losses and “add[ing] to grid reliability.”

Finally, both parties argued that the Commission's failure to approve the proposed amendment would force them into binding arbitration. They contended that an arbitrator might find that “fair market value” means something significantly higher than the price reflected in their current proposal.

### **B. The Department**

The Department found that the PPA extension price was “far above the market value” based upon its review of historical and forecasted MISO market prices.<sup>5</sup> And the Department argued that, contrary to the County's assertions, extending the life of HERC might actually *create* transmission costs.

Despite its misgivings, the Department concluded that, in light of the risk posed by arbitration, the proposed PPA amendment was reasonable with certain modifications related to the recovery of capacity costs.<sup>6</sup>

### **III. Commission Action**

The Commission's review at this juncture is focused on whether the purchase price under the proposed PPA amendment reflects a reasonable approximation of the current fair market value of HERC's electrical output. The Commission finds that it does not. Therefore, and for the reasons explained below, the Commission will reject the proposed amendment.

The original PPA contemplates that if the agreement is extended, Xcel will purchase HERC's electrical output “at its fair market value to [Xcel] at the time it is offered.” But the Department's analysis demonstrated that the per-MWh price proposed in the amendment is substantially above forecasted MISO market prices.

Moreover, none of HERC's alleged unique characteristics provide a basis for charging Xcel's ratepayers substantially more than the market rate for electricity. As the Department points out,

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<sup>4</sup> Xcel deems both the per-MWh price under the proposed amendment and the amounts of its energy and capacity payments under the current PPA to be trade-secret information.

<sup>5</sup> The Midcontinent Independent System Operator, Inc., or MISO, controls the Midwestern transmission system. MISO also operates an electricity market designed to value, and prioritize the dispatching of, generation resources on that system.

<sup>6</sup> See Department's September 11, 2017 comments, at 6. The Commission does not address these modifications because of its conclusion, below, that the proposed price does not reasonably approximate the current fair market value of HERC's electrical output.

the location of a generator is factored into MISO's "locational marginal price," or LMP. The value that HERC brings to Xcel's system based upon its location is therefore reflected in the market data reviewed by the Department.

The parties urge the Commission to approve the PPA amendment because rejecting it would force them into binding arbitration, with unpredictable results. However, the Commission concludes that the risks associated with arbitration do not justify approving a price that is well above the market rate.

As a preliminary matter, the Commission does not agree that rejecting the amendment will inevitably force the parties into arbitration. While the Commission trusts that Xcel and the County negotiated thoroughly before agreeing to the proposed amendment, the amendment itself contemplates further negotiations if the Commission does not approve it. If the Commission's approval is not obtained, the parties must "endeavor to reach a new agreement" that addresses the reason for the Commission's decision.<sup>7</sup> The Commission has clearly set forth the basis for its decision to appropriately inform further negotiations.

Xcel and the County suggest that arbitration could result in a determination that the fair market price is higher than they negotiated. But while such a determination might bind the parties, it would not bind the Commission. If arbitration becomes necessary, the Commission will retain both the authority and the duty to determine the reasonableness of the PPA price and ensure that ratepayers are protected.<sup>8</sup>

For all the foregoing reasons, the Commission will reject Xcel and the County's proposed amendment to the HERC PPA.

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<sup>7</sup> First Amendment to the HERC PPA, at 4.

<sup>8</sup> See Minn. Stat. § 216B.03 (requiring that "[e]very rate made, demanded, or received by any public utility . . . shall be just and reasonable"); see also First Amendment to the HERC PPA, at 4 (providing that "[a]ny award that results from . . . arbitration shall also be subject to PUC Approval").

## ORDER

1. The Commission hereby rejects the proposed First Amendment to the HERC PPA.
2. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf  
Executive Secretary



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