

January 8, 2020

PUBLIC DOCUMENT

Ryan Barlow
Acting Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
Saint Paul, Minnesota 55101-2147

RE: **PUBLIC Comments of the Minnesota Department of Commerce, Division of Energy Resources**
Docket No. E002/M-19-268

Dear Mr. Barlow:

Attached are the **PUBLIC** Comments of the Minnesota Department of Commerce, Division of Energy Resources (Department), in the following matter:

Petition for Approval of a Wind Energy Purchase Agreement between the Company and Invenergy Wind Energy Development, LLC.

The Petition was filed on October 1, 2019 by:

Bria Shea
Director, Regulatory and Strategic Analysis
Xcel Energy
414 Nicollet Mall (401–7th Floor)
Minneapolis, MN 55401

The Department recommends that the Minnesota Public Utilities Commission (Commission) **approve the petition**. The Department is available to answer any questions that the Commission may have in this matter.

Sincerely,

/s/ STEVE RAKOW
Analyst Coordinator

SR/ja
Attachment



Before the Minnesota Public Utilities Commission

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

Docket No. E002/M-19-268

I. INTRODUCTION

On April 10, 2019 Northern States Power Company, doing business as Xcel Energy (Xcel or the Company) submitted a letter stating that:

As discussed in our April 1, 2019 Renewable*Connect annual compliance filing (Docket No. E002/M-15-985), the Company is taking steps to procure resources to supply our renewable offerings. We are proposing to add 200 MW of wind resources (100 MW from wind resources that will go into service in 2020 and 100 MW that will go into service in 2021). Toward that end, today the Company issued an RFP [request for proposals] for wind resources with proposals due to be submitted to us by May 1, 2019.

On October 1, 2019 Xcel filed the Company's *Petition for Approval of a Wind Energy Purchase Agreement between the Company and Invenergy Wind Energy Development, LLC* (Petition).

On October 25, 2019 the Minnesota Department of Commerce, Division of Energy Resources (Department) filed a letter indicating that the power purchase agreement (PPA) in question was not available and requested that the comment period be suspended and re-established once Xcel files the PPA with Invenergy Wind Energy Development, LLC (Invenergy).

On October 28, 2019 the Minnesota Public Utilities Commission (Commission) suspended the comment period.

On November 25, 2019 Xcel filed the *Wind Energy Purchase Agreement between Northern States Power Company and Deuel Harvest Wind Energy LLC* (Executed PPA).

On December 3, 2019 the Commission established comment periods of January 10, 2020 and January 22, 2020.

II. DEPARTMENT ANALYSIS

A. GOVERNING STATUTES AND RULES

The Executed PPA is for an approximately 100- megawatt (MW) share of Invenergy's Deuel Harvest North Wind project (Deuel Harvest or the Project). In total, the Project will be an approximately 300-MW wind generation facility located in Deuel County, South Dakota. As indicated above, the Executed PPA is intended to support expansion of the Company's Renewable*Connect (R*C) program.

Under the Commission's Rules, the Petition falls within the definition of a "miscellaneous" filing under Minnesota Rules 7829.0100, subp. 11 since no determination of Xcel's revenue requirement is necessary. Minnesota Rules part 7829.1300 contains the completeness requirements for miscellaneous filings. The Department reviewed the Petition for compliance with the completeness requirements of Minnesota Rules and Minnesota Statutes and concludes that the Petition is substantially complete.

B. NEED ANALYSIS

The Petition states that the Company "proposes to purchase a 100 MW portion of the Project's output to serve customer demand in our Renewable*Connect program." The Department's February 27, 2019 comments in Docket No. E002/M-19-33 summarized the current status of Xcel's R*C program as follows:

Xcel's R*C Pilot program is currently fully subscribed with a waiting list of approximately 400 customers seeking to participate. Xcel proposes to expand its R*C offering with an additional 30 MW of solar for its ongoing Month-to-Month offering, and 150 MW of new wind generation and 50 MW of new solar for its Long Term Offering.

The Commission's August 12, 2019 *Order Approving Petition with Modifications* in Docket No. E002/M-19-33 approved the Company's R*C proposals with certain modifications that did not impact the need for new wind generation to serve the Long Term Offer option. Therefore, the Department concludes that Xcel has demonstrated a need for additional wind resources to serve customers participating in R*C's Long Term Offering.

Reflecting the proposed need, the Petition states that Xcel proposes "to recover energy costs under this PPA through the Long Term Offer Renewable*Connect tariffs with participating customers." However, the Company clarified that "As the Commission's Order approving the Program has only authorized Renewable*Connect long-term offerings up to 10 years in length, it is possible that the Company would request authorization to recover some of the costs of this PPA as a system resource in the out years."

Note that Article 7 of the Executed PPA clearly assigns the Green Benefits¹—including Renewable Energy Credits (RECs), avoided pollutants, and avoided greenhouse gases associated with Xcel’s 100-MW share of Deuel Harvest to Xcel. Also, Article 7 clearly assigns to Xcel all capacity and resource-adequacy characteristics associated with the 100-MW share of Deuel Harvest.

C. ALTERNATIVES ANALYSIS

1. Xcel’s RFP Process

a.) Background

Xcel selected Deuel Harvest through an RFP process. Consistent with the Company’s goals for R*C, on April 10, 2019 Xcel made a filing in this proceeding notifying the Commission of an RFP that the Company issued the same day for up to 100 MW from wind resources that will go into service in 2020 and 100 MW that will go into service in 2021.

Xcel announced its RFP through a variety of mediums.² The RFP was open to wind projects of 20 MW or greater and required offers to be PPA proposals for a new wind facility, a to-be-built wind facility, or a repowered wind facility. Projects were required to have a point of interconnection in Minnesota, North Dakota, or South Dakota. The Company’s response to Department Information Request No. 1 states that in response to the RFP, Xcel received PPA proposals from 9 different project developers, covering 12 different project sites. Each PPA proposal consisted of multiple price options that varied on the following parameters:

- PPA term;
- use of union or non-union labor;
- expected commercial operation date; and
- flat or escalated pricing.

Overall the RFP stated that the Company intended to use a three-phase approach to evaluating proposals offered in the RFP. The three phases include a completeness review, a threshold review, and a key parameters review and scoring. Each phase is discussed below.

b.) Completeness Review

In the first phase of the RFP, the Company performed a completeness review of the PPA proposals. According to the RFP document the completeness review “ensures compliance with all bid submittal requirements (fees, sufficient information provided in bid responses, etc.)” The Company’s response

¹ Note that the Green Benefits exclude any production tax credits, which remain with the seller.

² See section 3.02 of the *Independent Auditor’s Final Report: Northern States Power Company 2019 Wind Solicitation* (IA Report), provided in response to Department Information Request No. 5.

to Department Information Request No. 1 stated that “The Northern States Power Company (NSP) 2019 Wind Solicitation Request For Proposals (RFP) evaluation team was split into primary and secondary evaluators to help maintain an unbiased evaluation of the bids received, as well as provide the bidders with an opportunity to remedy any issues identified during the primary evaluation.”

The Company’s response to Department Information Request No. 1 further states that, during the initial completeness review, 5 PPA proposals were deemed incomplete. Notices of incompleteness were sent to these bidders. [TRADE SECRET DATA HAS BEEN EXCISED]. The other bidders did not modify the PPA proposals. Therefore, [TRADE SECRET DATA HAS BEEN EXCISED] were disqualified and excluded from further evaluation as a result of the completeness review.

c.) Threshold Review

In the second phase of the RFP, the Company performed a threshold review of all of the PPA proposals. According to the RFP document, the threshold review “ensures the bidder and RFP Project complies with all specific bid requirements including:

- a. RFP Project size
- b. RFP Project location
- c. RFP Project anticipated commercial operation date
- d. Interconnection to MISO [Midcontinent Independent System Operator, Inc.] in the Project Area
- e. Bidder creditworthiness
- f. Bidder experience
- g. Accounting assessment”

According to the Company’s response to Department Information Request No. 2, “Similarly to the completeness review, the RFP evaluation team was split into primary and secondary evaluators to help maintain an unbiased evaluation of the bids received, providing bidders with an opportunity to remedy any issues identified during the primary evaluation.”

The Company’s response to Department Information Request No. 2 states that, during the initial threshold review “14 PPA Proposals were deemed to have not met the threshold review, as their proposals did not meet the minimum threshold requirements related to interconnection.” As with the completeness review, following the initial threshold review, notices were sent to all relevant bidders to remedy the threshold non-compliance. Following the final threshold review 4 PPA proposals remained noncompliant. These PPA proposals were disqualified and were excluded from further evaluation or scoring.

d.) Key Parameters Review and Scoring

In the third phase of the RFP, the Company performed a key parameters review and scored the PPA proposals. According to the RFP document, Xcel “identified the following key parameters to evaluate the RFP Projects with:

- a. Pricing
- b. Transmission
- c. Labor
- d. PPA Compliance”

The Company’s response to Department Information Request No. 3 states that “10 PPA Proposals, consisting of 31 price options (“Option”), passed the completeness and threshold reviews.” Each Option was scored using a scale from 0 to 10 on the following parameters:

1. price—85% of the overall evaluated value;
2. transmission—5% of the overall evaluated value;
3. labor—5% of the overall evaluated value; and
4. PPA compliance—5% of the overall evaluated value.

The Company’s response to Department Information Request No. 3 explained the scoring as follows. For price, Xcel calculated a levelized cost of energy (LCOE) using the bid price and PPA term provided for each Option. Xcel then created 10 price bins, determined by dividing the range of LCOEs into 10 equal bins, and each Option was placed in the relevant bin. Options in the lowest price bin received 10 points, those in the next lowest bin received 9 points, and so on.

For transmission, each Option that included a bidder statement certifying that all transmission and interconnection costs were borne by the bidder received 4 points. The remaining 6 points were allocated based MISO queue position. Options with MISO queue positions in a 2016 study group received 6 points, those in a 2017 study group received 4 points, those in a 2018 study group received 2 points, and those in the 2019 study group received 1 point.

For labor, each Option with a union labor bid price received 10 points. Each Option with a non-union labor bid price received 0 points.

For PPA compliance, Options that included a bidder statement certifying that the bid complied with the NSP Model PPA received 4 points. The remaining 6 points were allocated depending on the number of exceptions in the Option. Options with no exceptions received 6 points, 1-10 exceptions received 3 points, and more than 10 exceptions received 0 points.

Note that a perfect score in each of the categories (price, transmission, labor, and PPA compliance) would result in an overall value of 100 points.³

e.) Short List

The last step of the RFP process was for the Company to create a short list of winning Options. The Company's response to Department Information Request No. 4 explained the development of the short list as follows:

Based on our scoring approach, three Options received a score of 90 points or higher. All remaining Options had overall scores of 77 points or less. Based on this result, NSP shortlisted these top three price options.

The short-listed Options involved the following projects:

- Allete's Glen Ullin Energy Center #2;
- Invenergy's Deuel Harvest North; and
- NextEra's Walleye Wind.

2. Department Conclusions on Xcel's RFP Process

After reviewing the information provided by the Company as summarized above, and the *Independent Auditor's Final Report: Northern States Power Company 2019 Wind Solicitation* (IA Report) provided in response to Department Information Request No. 5, the Department concludes that Xcel reasonably evaluated the projects in accordance with the parameters specified in the RFP. Further, the Company's short list of the top three projects is reasonable. Note that, according to the response to Department Information Request No. 3, the LCOE for the short-listed projects **[TRADE SECRET DATA HAS BEEN EXCISED]**.

Regarding the IA Report, the independent auditor found one issue. Namely that "Xcel did not follow the stated protocol by failing to provide answers to questions in an addendum format, the Independent Auditor finds this did not impact the completeness of information provided Bidders, responsiveness of Bidders, or the evaluation or results of the RFP process, as the documents provided were easily viewed and accessible." The Department agrees with the independent auditor's conclusion.

³ To get the 100 point scale for an Option, take the Option's score in each category times its weight (85 percent or 5 percent) then times 10.

3. PPA Negotiations

The Petition indicates that the Company began negotiations with the top ranked project, but “As we proceeded with negotiations on our first choice project, challenges with the MISO queue environment were emerging, and the project’s seller was no longer willing to bear interconnection cost risk per our RFP requirements.” The Petition states that the Company then moved to begin negotiations with the other two shortlisted options. However, one of those had already executed a PPA with another buyer, leaving Deuel Harvest as the last shortlisted Option.

According to the Petition, when the Company approached Invenergy, “Seller provided an updated bid with changes to its proposed price and PPA duration, among other terms.” The result of the revisions is that the LCOE of the Project is expected to be **[TRADE SECRET DATA HAS BEEN EXCISED]**. Note that, since Deuel Harvest is under a PPA and the PPA does not **[TRADE SECRET DATA HAS BEEN EXCISED]**, Xcel cannot benefit from changes in the PPA price.⁴ In addition, the project is needed to serve customers under a green pricing tariff and not ratepayers as a whole. The basics of green pricing is that customers pay a premium for special access to renewable energy.

At this point, the Company essentially had two choices, agree to a revision of the terms of the Option, or re-start the RFP process. While as a general rule the Department is opposed to substantial revision of bids after the beginning of the RFP process, given:

- the size of the change in LCOE;
- the timing of the need;
- the fact that Deuel Harvest is not intended to serve ratepayers as a whole;
- the fact that Deuel Harvest is intended to serve green pricing customers;⁵ and
- the status of the MISO generation interconnection queue;⁶

the Department concludes that it was reasonable for Xcel to continue negotiations regarding Deuel Harvest rather than re-start the RFP process. Eventually, on November 25, 2019, the Executed PPA was signed and filed with the Commission for approval.

⁴ Regarding what is being purchased, note that Article 7 assigns to the seller rights to compensation for ancillary services such as operating reserves, ramp capability, reactive supply, and voltage control.

⁵ The Department notes again that the Petition indicates it is possible Xcel will request recovery from ratepayers in general in the out-years (after year 10) due to current limits on the length of R*C offerings.

⁶ According to the data for the MISO generation interconnection queue for the West region (accessed December 12, 2019), about 63 percent of the capacity in the DPP-2016-AUG group is listed as withdrawn. About 93 percent of the capacity in the DPP-2017-FEB group is listed as withdrawn. Both the DPP-2016-AUG and DPP-2017-FEB groups are in the Generator Interconnection Agreement (GIA) negotiation phase. The DPP-2017-AUG group is currently in Definitive Planning Phase (DPP) phase 2 and 48 percent of the capacity is already listed as withdrawn. Thus, the queue likely places substantial limits on Xcel’s options for finding replacement projects in the near future.

D. PPA REVIEW

1. Protection of Ratepayers from Risks

a) Financial Risks

For PPAs, there are two main financial risks that may have negative impacts on Xcel's ratepayers. They are:

- a seller default and termination of the PPA before the expiration of the contract period; and
- entitlement by a lender or other party, as a result of the seller's failure to pay debt, to take over the project and terminate the PPA.

Under these events, Xcel may be forced to find more costly replacement power when the PPA is terminated. Further, under both events, the projects may be terminated and jeopardize Xcel's compliance with various statutory requirements and Commission orders.

The terms of the Executed PPA are similar to the terms of the Courtenay and Odell PPAs approved by the Commission in Docket No. E002/M-13-603 and the Clean Energy and Crowned Ridge PPAs approved by the Commission in Docket No. E002/M-16-777.

Article 12 of the Executed PPA describes events that constitute seller's default which includes seller's:

- bankruptcy or liquidation;
- assignment of the PPA or any rights under the PPA except in specified circumstances;
- failure to:
 - establish and maintain the security fund;
 - obtain and maintain insurance;
 - maintain the Actual Availability Percentage; or
 - make required payments to Xcel; and
- breach of the Interconnection Agreement.

Article 12.4 also specifies limitations on damages. If Xcel incurs damages in excess of the damage cap and the seller does not pay for those excess damage costs when billed by Xcel, the Company has the right to terminate the Executed PPA. The damage cap places some financial risk upon the Company, but provides for the Company to limit damages of an on-going nature through the termination right.

Article 11 describes the Security Fund required to be established by the seller to account for damages caused by the seller. The Security Fund will be **[TRADE SECRET DATA HAS BEEN EXCISED]**. Xcel can draw upon the Security Fund to recover amounts owed to Company pursuant to the Executed PPA which have not been paid when due. Such amounts potentially include delay damages, failure to achieve the delivery commencement date, and amounts for which the Company is entitled to indemnification under the Executed PPA.

Article 16 and Exhibit E describe the insurance products required to be obtained by the seller, the qualifications required of the insurance company, the term of the insurance, and related matters. Such insurance policies serve to mitigate the financial risk faced by Xcel if an insured event were to occur.

Article 17 contains the indemnification provisions. Of interest in terms of risk mitigation, one requirement is that the seller indemnify and hold the Company harmless against all losses arising out of any claim alleging Environmental Contamination at the site and/or illegal disposal of Hazardous Materials.

Article 19 includes restrictions on the transfer of Deuel Harvest and on changes of control of the seller. Such restrictions make it less likely that the Executed PPA will be assigned to a party that is unable to meet the terms.

Article 20 describes, among other issues, the treatment of taxes. In this case some risk related to tax changes is not included in the energy price and is allocated to Xcel. Specifically, the Company is responsible for the payment of:

1. any sales, use or equivalent taxes on the purchase of energy at the Point of Delivery; and
2. any taxes on the transmission of energy beyond the Point of Delivery.

After reviewing the risk allocation features of the Executed PPA, the Department concludes that Xcel's ratepayers would be reasonably protected from financial risks.

b) Operational Risks

As is typically true of PPAs, the operational risks are the risks that the Project will not be built and operated as expected. These risks include a complete shutdown or a partial shutdown of the Project due to technical problems. In the case of a partial shutdown, ratepayers must be assured that their payments for the wind energy are reduced accordingly. In the case of a complete shutdown, once again Xcel may face the risk of non-compliance with the various legislative or Commission requirements, and may need to find what is likely to be more expensive replacement power.

The Executed PPA includes specific features that protect both Xcel and its ratepayers from the operational risks discussed above. These features include the security fund discussed above, and payments only for energy actually delivered to Xcel.⁷

Article 4 includes terms regarding the capacity of the project. In any case, the seller is required to construct a minimum nameplate capacity. If the seller cannot meet the full capacity requirement (but can meet the minimum requirement) the seller must pay the Company damages based upon an amount specified in the Executed PPA. This provides the seller an incentive to meet the capacity requirements specified in the Executed PPA.

⁷ In any case the Company is not required to pay for energy from Deuel Harvest in excess of 100 MW.

Exhibit M provides the availability guaranty calculation, the minimum availability requirement, and the damages should the minimum availability requirement not be met. This ensures that Deuel Harvest will be operational a minimum portion of the year or Xcel will be compensated.

[TRADE SECRET DATA HAS BEEN EXCISED]

Article 5 requires certain metering and allows either party to install, at its own expense, backup metering devices. This ensures that Xcel's payments are for energy actually received.

After reviewing these risk allocation features in the Executed PPA, the Department concludes that Xcel's ratepayers would be reasonably protected from the operational risks.

2. Curtailment Provisions

For wind power, payments for curtailed energy may be necessary to maintain financial viability of the wind project. Unlike other PPAs, in this case the Company is a minority purchaser for the Project. As a result, the Petition states that the seller will remain the MISO market participant and will be in control of scheduling the project into MISO, including initiating - or responding to MISO direction for - curtailments. Ultimately, the Company must pay the seller for all energy delivered to the Point of Delivery. Generally speaking, curtailment would prevent the energy from reaching the Point of Delivery.

III. CONCLUSION AND RECOMMENDATIONS

The Department recommends that the Commission approve Xcel's Petition.

/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
Public Comments**

Docket No. E002/M-19-268

Dated this **8th** day of **January 2020**

/s/Sharon Ferguson

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