

**STATE OF MINNESOTA
FOR THE PUBLIC UTILITIES COMMISSION**

In the Matter of the Petition of Northern
States Power company d/b/a Xcel Energy
for Approval of Competitive Resource
Acquisition Proposal and Certificate of
Need

PUC Docket No.: E-002/CN-12-1240
OAH Docket No. 8-2500-30760

**ENVIORNMENTAL INTERVENORS' REPLY TO EXCEPTIONS TO THE ALJ'S
FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION**

January 31, 2014

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I. INTRODUCTION.

Izaak Walton League – Midwest Office, Sierra Club, Fresh Energy and Minnesota Center for Environmental Advocacy (collectively “Environmental Intervenors”) submit this Reply to Exceptions in support of the ALJ’s Report and Recommendations. Because the record fails to establish a need justifying selection of a resource larger than the bid offered by Geronimo, because Geronimo’s solar bid is in line with state policy goals, and because the Geronimo bid is in the public interest, the Commission should adopt the ALJ’s recommendation and select the solar bid.

II. XCEL HAS NOT JUSTIFIED A CAPACITY NEED GREATER THAN GERONIMO’S BID.

Parties’ exceptions to the ALJ’s Recommendations turn in great part on the size of the capacity need established in this docket. The ALJ correctly determined that no party “confidently predicted” a need of greater than 120 MW in 2019. Indeed, the most current forecasts and current MISO policies would suggest Xcel may have less than 30 MW of capacity need in 2019, or none at all if the Company accessed all the load management potential on its system. What is clear from the record is that Xcel did not meet its burden to justify a level of capacity need that would require procurement of the natural gas resources bid in this proceeding. Environmental Intervenors support the ALJ’s recommendation to select the Geronimo bid and, if necessary, procure additional resources should additional need arise in later years.

A. The Commission’s Order Did Not Establish A Defined Capacity Need And The ALJ’s Findings Are Not Inconsistent With The Commission’s Order.

As an initial matter, and contrary to the Department’s repeated misstatements, the Commission’s March 5, 2013 Order did not establish that Xcel had a defined capacity need that must be adopted by the ALJ and parties to the Competitive Resource Acquisition Proceeding.

To the contrary, it was made crystal clear at the hearing concluding Xcel's IRP and establishing this docket that the certificate of need criteria, including the amount of capacity need, would be established in the contested case proceeding.

Commissioners will recall that the Environmental Intervenors had requested a decision option making explicit that the certificate-of-need criteria, including the requirement to justify projected need, be resolved by OAH in the contested case.¹ The parties, including Xcel and the Department of Commerce, told the Commission that such an explicit instruction to OAH was unnecessary because it was clear that the certificate-of-need requirements applied to the Competitive Resource Acquisition Proceeding.

Commission Chair Heydinger, during the February 20, 2013 hearing on the IRP and the Competitive Resource Acquisition Proceeding, questioned both Xcel and the Department to ensure agreement on this point. For example, the Chair had the following exchange with Xcel's representative Jim Alders:

Mr. Alders:

"We envision a finding on your part saying that based on this record there is the potential for 150 growing to 440 MW over this time frame... We agree with parties that the whole issue can still be examined during the certificate-of-need-like process. And if there is substantial evidence in that process that a different conclusion should be met you're still free to do that at the end of the selection process."

Chair Heydinger:

"You would concur that essentially in any case, during the resource acquisition process, the certificate of need standards will need to be demonstrated."

Mr. Alders:

"Correct."²

¹ See Staff Briefing Papers, February 20, 2013 Hearing, Docket E-002/CN-12-1240, Decision Option 4a ("Explicitly request that the OAH resolve the issue of whether the projected need is justified, consistent with the Certificate of Need statute.")

² February 20, 2013 Hearing, Docket E-002/RP-10-825, Hearing Video 1:35:59 – 1:36:39.

Later at the same hearing, Chair Heydinger confirmed the same understanding with the Department of Commerce’s representative, Chris Davis, when Mr. Davis referred to Decision Option 4, which would have made an explicit request to OAH to resolve the issue of need:

Mr. Davis:

“On [Decision Option] 4, the certificate of need criteria, we recommend take no action.”

Chair Heydinger:

“And could you be clear why? Because it’s implicit or is there some other reason?”

Mr. Davis:

“Chair Heydinger, the Department thinks it is implicit. You’re going to have to prove that you have your need going forward...”³

Mr. Davis also agreed that the other requirements of the certificate of need statute applied to the Competitive Resource Acquisition Proceeding as well:

Chair Heydinger:

“The point is that the Certificate of Need statute has some provisions that say that the applicant needs to make a showing that it can’t meet its need through . . . demand response and renewable energy and so on . . . and Mr. Reuther wanted to be sure that the Company was acceding that all of those requirements of a certificate of need would apply in this process...”

Mr. Davis:

“Chair Heydinger, I would assume that that is true, too, that those would apply.”⁴

The degree to which Xcel has a capacity need requiring new generation was a contested issue at the conclusion of the Company’s IRP, and the Commission made clear during its deliberations that the question of need, including the size of any need, would be determined through the contested case. Chair Heydinger made this known to all parties:

Chair Heydinger:

“The Commission wants to be clear that the IRP is for planning purposes only.... There are limitations to the IRP, the goal being to give us some kind of a blue print, in the broadest sense, what direction do we think this company needs to go and what can we anticipate in the future. Having said that there’s still a tremendous number of open

³ February 20, 2013 Hearing, Docket E-002/CN-12-1240, Hearing Video 3:02:00 – 3:02:59.

⁴ February 20, 2013 Hearing, Docket E-002/CN-12-1240, Hearing Video 3:03:35 – 3:04:14.

questions as to the specifics of size, type, and timing, and that, it seems to me, is what the resource acquisition process is intended to address... ”⁵

That the certificate-of-need criteria apply in this proceeding is also clear from the 2006 docket in which the Commission first established the framework for competitive resource acquisition proceedings. This matter is proceeding under “a bidding process approved and established by the commission” pursuant to Minnesota Statutes Section 216B.2422, subdivision 5. That process was approved and established in 2006 by an Order of the Commission in a separate Xcel docket. The process requires a “certificate-of-need-like” proceeding because Xcel is one of the bidders.⁶ In the compliance filing required by the 2006 Commission’s Order, Xcel described the procurement process as requiring it to make a detailed certificate of need filing.⁷ It is clear that the intent of the 2006 Order is for the criteria, standards and burdens established in the certificate of need statute to apply in this competitive procurement even though the certificate of need itself is not required. The ALJ’s Report reflects appropriate consideration of these criteria and standards.

In sum, the Commission did not establish a defined, immutable need when it opened the Competitive Resource Acquisition Proceeding. Indeed, it was clear to all parties at the time this docket was commenced that the size of Xcel’s need would have to be established in the contested case. Whether Xcel in fact has met its burden to demonstrate a need and other criteria of Minnesota statutes is appropriately the subject of the contested case and this proceeding.

⁵ February 20, 2013 Hearing, Docket E-002/RP-10-825, Hearing Video 1:56:50.

⁶ *In the Matter of Northern States Power Company d/b/a Xcel Energy’s Application for Approval of its 2004 Resource Plan*, Docket No. E-002/RP-04-1752, May 31, 2006 Order Establishing Resource Acquisition Process, establishing Bidding Process under Minn. Stat. § 216B.2422, subd. 5, and Requiring Compliance Filing p. 7 (May 31, 2006).

⁷ *In the Matter of Northern States Power Company d/b/a Xcel Energy’s Application for Approval of its 2004 Resource Plan*, Docket No. E-002/RP-04-1752, Compliance Filing p. 5 (August 28, 2006).

B. Xcel Has The Burden To Establish Need.

Minnesota Statutes place the burden to demonstrate compliance with the certificate of need criteria squarely on the utility.

No proposed large energy facility shall be certified for construction unless the applicant can show that demand for electricity cannot be met more cost effectively through energy conservation and load-management measures and unless the applicant has otherwise justified its need.⁸

Moreover, the statute instructs the Commission to evaluate a number of factors to determine whether a utility has met its burden. Those factors include:

- Accuracy of the forecast;
- Effect of conservation programs;
- Effect of “other federal or state legislation”;
- Possible alternatives to satisfying the energy demand, including increased efficiency and load management programs;
- the policies and regulations of other agencies;
- “any feasible combination of energy conservation improvements.”⁹

The Department of Commerce’s critique of the ALJ’s findings on need ignore the statutory requirements. The Department asks the Commission to ignore more recent forecasts that show the 2011 forecast to be inaccurate; to ignore “state legislation” that adds value to the solar bid; to ignore the policy changes adopted by MISO that significantly reduce the company’s capacity need; and to ignore the potential for additional conservation and load management that are not factored into the inflated 2011 forecast. The Department’s position is not consistent with the certificate of need statute.

⁸ Minn. Stat. § 216B.243, subd. 3.

⁹ *Id.*

C. The ALJ Correctly Determined That Xcel Has Not Demonstrated Capacity Need Greater Than Can Be Met By Geronimo’s Proposal.

The ALJ correctly found that the record in this proceeding does not justify need in the near term for more capacity than offered by Geronimo, especially with the availability of GRE’s capacity credits. Moreover, the ALJ determined that if additional need were to materialize over the longer term, Xcel has adequate time to secure additional resources. Both conclusions are supported by the record and in line with state policy, which the Department notes is to furnish “efficient and reasonable service.”¹⁰ It is neither efficient nor reasonable to invest now in fossil fuel resources that the record shows may not be needed.

1. The Department’s consideration of lower-load forecast sensitivities does not substitute for an assessment of the need itself.

In this docket, the Department appears so concerned with the decline in Xcel’s 2013 load forecast that it would have the Commission ignore it in favor of an outdated 2011 forecast. The Department claims that it “relied not only on the forecast that was already analyzed and approved by the Commission...but also on analyses assuming demand and energy forecasts *below* [emphasis in original] the level of Xcel’s Spring 2013 vintage forecast.”¹¹ The Department’s statement is misleading. Where need is concerned, it is asking the Commission to weigh Xcel’s 2011 forecast above all others. It is true that the Department’s mid-low forecast sensitivity considered just 4 MW of capacity need in 2019. But the Department is, here, asking the Commission to validate a need of 150 MW by 2017 to 500 MW by 2019 based on a forecast that is over three years out of date.

The fact that the Department ran Strategist sensitivities assuming lower levels of capacity need is not relevant to the statutory question the Commission must answer: Has Xcel

¹⁰ Minn. Stat. § 216B.04 (quoted in Department Exceptions, p. 2).

¹¹ Department Exceptions, p. 15.

demonstrated a need for so much capacity? As the ALJ concluded, the evidence simply does not support a finding that the 2011 forecast is accurate.

2. The Department overstates the role any “short-term” forecast played in the ALJ’s assessment.

The Department Exceptions state that “the ALJ Recommendations erroneously relied on Xcel’s forecast reductions in short-term energy sales in the Company’s rate case for Minnesota, rather than the Commission’s determination of long-term energy and capacity needs in Xcel’s resource plan.”¹² The Department cherry-picks from the ALJ’s report, focusing on one reference to a decline in sales forecasted for 2014 and 2015. While the ALJ does indeed mention that Xcel recently filed testimony in its current rate case (relying on a Fall 2013 forecast) noting that its sales will fall by 0.6 percent in 2014 and another 0.4 percent in 2015, that is not the only or the most persuasive of evidence in the record that the 2011 forecast is inaccurate.

The Spring 2013 forecast is the most recent and most reliable record evidence. It shows declining need. The Spring 2013 forecast is a “long-term” forecast that shows significantly less demand than the 2011 forecast. According to Xcel’s witness Steve Wishart, the 2013 forecast (using 2014 MISO reserve rules) predicts no capacity need in 2017 (excess capacity = 84 MW) and a need of only 128 MW in 2019.¹³ As Xcel described in its response to MCEA IR 7 in Docket No. E002/GR-13-868, “[t]he Company generally produces two forecasts each year – one in the early spring and one in the fall.” The Spring 2013 forecast goes out to 2042 and conforms with Xcel’s normal issuance of two load forecasts per year. The fact that a later forecast confirms even lower demand in the short-term doesn’t change this.

¹² Department Exceptions, p. 9.

¹³ Exh. 46, Wishart Direct, p.10.

3. Even if the Company understates its forecasts for purposes of rate cases, as the Department alleges, the most current record evidence still shows no capacity need as of 2017.

In its exceptions, the Department cautions against considering the sales forecast in Xcel's current rate case saying "utilities have an incentive to understate sales forecasts in rate cases since lower sales generally result in higher rates." Environmental Intervenors submit that, similarly, utilities have an equal incentive to overstate need in certificate of need proceedings where approval of a self-build project would increase rate base.

It is worth noting that the Spring 2013 load forecast exists in two versions. The first, issued on March 25, 2013, (offered in Xcel's 2012 rate case and used in the Certificate of Need Application) shows peak demand of 9,401 MW; 9,477 MW; and 9,549 MW in 2017, 2018 and 2019 respectively. However, the load forecast used in Xcel's Strategist modeling in this Competitive Resource Acquisition docket was 9,500 MW; 9,590 MW; and 9,676 MW in 2017, 2018 and 2019.¹⁴ Thus, the 2013 forecast used in the modeling for this docket is not a forecast developed for purposes of a rate case.

If one were to update Mr. Wishart's Table 4 from his direct testimony with data from the original 2013 forecast, Xcel would have *no capacity need* even in 2019 as shown in the last three columns in the table below.

¹⁴ The response to MCEA IR 003 in Docket No. E002/CN-12-1240 gives a change in embedded DSM as the reason for the modification.

Table 1. 2014 Reserve Margin with Current Spring 2013 Load Forecast and Original Spring 2013 Load Forecast

	2014 Reserve Margin			2014 Reserve Margin w/ Original Spring 2013 Load Forecast		
	2017	2018	2019	2017	2018	2019
Peak Coincidence Factor	9,500	9,590	9,676	9,401	9,477	9,549
Coincidence Peak RM%	95%	95%	95%	95%	95%	95%
Coincidence Peak	9,025	9,111	9,192	8,931	9,003	9,072
RM%	7.3%	7.3%	7.3%	7.3%	7.3%	7.3%
Total Obligation	9,684	9,775	9,863	9,583	9,660	9,734
Resources						
Coal	2367	2367	2367	2367	2367	2367
Nuclear	1623	1623	1623	1623	1623	1623
Gas	3427	3416	3416	3427	3416	3416
Wind, Hydro, Bio	1238	1189	1162	1238	1189	1162
Solar	49	66	83	49	66	83
Load Management	1063	1074	1085	1063	1074	1085
Total Resources	9768	9735	9735	9768	9735	9735
Long (Short)	84	(40)	(128)	185	75	1

Thus, if Xcel were understating need in its prior rate case but overstating it in the current docket, then true forecasted need would seem to lie somewhere in between and would not exceed 0 MW in 2017, 40 MW in 2018 and 128 MW in 2019.

4. The ALJ appropriately considered MISO’s reserve margin requirements.

On a yearly basis, MISO publishes its Loss of Load Expectation (“LOLE”) Study, which sets the Planning Reserve Margin (“PRM”) for the upcoming year. The PRM for the past five years is shown below in Figure 1.

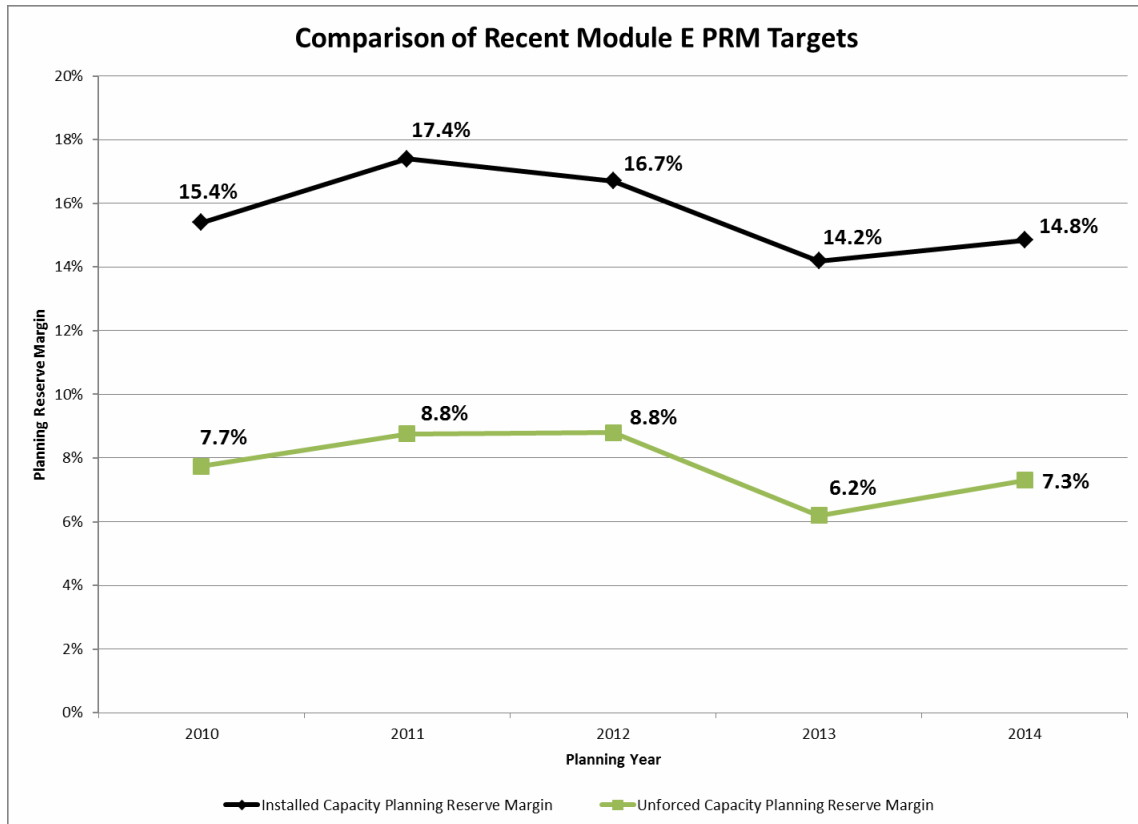


Figure 1. MISO Current and Historic PRMs¹⁵

The PRM is applied on an unforced capacity (“UCAP”) basis, so the most relevant line in Figure 1 is the green line. We are not aware of any instance in which the Commission has chosen to ignore MISO’s PRM for the upcoming year in favor of a prior year’s PRM. Nor is there any reason to do so. Indeed, the transition to making the PRM coincident with the MISO peak was made known to Xcel on *November 1, 2012*, when MISO published its 2013 LOLE Study. To imply that the change to a coincident peak is a new requirement is disingenuous.

Given prior history, it is in fact reasonable to expect that MISO’s PRM requirement for 2015 will be different than 2014’s requirement. However, there is no evidence that it will be higher or lower. As such, there is no reason *not* to use MISO’s current PRM construct *which*

¹⁵ *Planning Year 2014 LOLE Study Report*, p. 51 (available at <https://www.misoenergy.org/Library/Repository/Study/LOLE/2014%20LOLE%20Study%20Report.pdf>).

includes assuming that the requirement applies to coincident peak demand. This is a perfect example of the ever-present problem facing resource planners – the future is uncertain.

However, using the best and most recent information available mitigates this problem to the extent possible. The Department and Xcel would have the Commission ignore the best and most recent information in favor of a MISO PRM that inflates Xcel’s capacity need.¹⁶

5. The Department has consistently supported over-estimates of need.

The Department has consistently supported forecasts that overstate need. While it is understandable that the Department is concerned with reliability, here, there is ample time and a host of options to ensure Xcel has the power to supply its customers over the next five years.

A decline in forecasted need is not unique to Xcel. For example, Otter Tail Power (“OTP”) has also seen its forecasted need decline significantly. Figure 2 shows OTP’s load forecasts filed in its 2013 IRP, its 2012 Baseload Diversification Study, its 2011 IRP and its 2006 IRP.

¹⁶ Unrelated to the PRM, the Department mentions a recent MISO analysis showing a deficit of capacity in MISO’s footprint of “3,000 to 7,000 MW in 2016.” The Department is applying a double standard here. The Department believes that Xcel’s forecasted drop in sales in 2015 and 2016 should not have any bearing on need in 2017 through 2019. However, it asks the Commission to conclude that a MISO need assessment for 2016 and only 2016, demonstrates that capacity is needed in 2017 and beyond. The Department cannot have it both ways. Even if the Commission took administrative notice of MISO’s presentation, it ought to consider what is not mentioned in this presentation. MISO ignores capacity coming online in 2017, takes out capacity that is deemed “uncertain” by MISO utilities without any indication of why that capacity is “uncertain” and has no firm estimate of how much capacity can be imported from capacity-rich MISO South to the supposedly capacity-poor MISO North and Central.

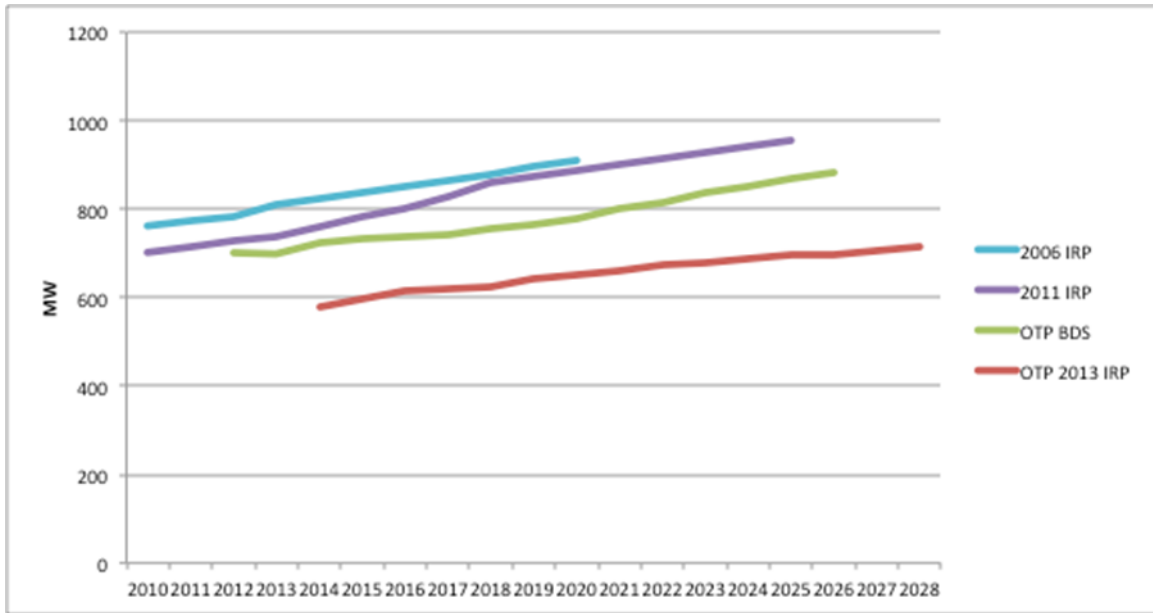


Figure 2. Otter Tail Power Current and Historic Load Forecasts (After Load Control)¹⁷

Figure 2 clearly demonstrates that load has dramatically declined in OTP’s service territory. For example, in its 2011 IRP, OTP forecasted peak demand of 758 MW in 2014; its current projection is 577.6 MW, a difference of 24 percent.

Despite these differences, the Department has regularly approved OTP’s load forecasts. For example, with regard to the 2011 IRP forecast, the Department stated that the forecast “provide[s] a reasonable approximation of expected sales and demand over the forecasting period.”¹⁸ It made the exact same determination regarding the Baseload Diversification Study load forecast in 2012.¹⁹ As shown in Figure 2, these predictions were wrong, significantly overstating the actual need and later projections.

¹⁷ Taken from OTP’s 2013 IRP, Docket No. E017/RP-13-961; OTP’s Baseload Diversification Study (filed October 3, 2012), Docket No. E015/RP-10-623; OTP’s 2011 IRP, Docket No. E015/RP-10-623; and the response to MN MCC IR 005 in Docket No. E017/RP-10-623. Note that 2006 IRP forecast assumes that OTP switches to summer peaking in 2013 and that forecast was filed in January 2008. Also note that the 2013 IRP is based on the MISO coincident peak.

¹⁸ Department Comments filed in Docket No. E015/RP-10-623 on May 16, 2011, p. 10.

¹⁹ Department Comments filed in Docket No. E015/RP-10-623 on November 30, 2012, p. 14.

6. Xcel has not shown that demand response cannot supplant additional capacity need in 2017 and beyond.

The Commission will recall that Xcel's most recent demand side management potential study indicated that the company could meet up to 300 MW of capacity need through additional demand response. In its IRP order, the Commission noted:

Xcel commissioned a study that suggests that Xcel could avoid the need for an additional 300 MW if Xcel could harness the full potential for demand response in its service area. Xcel argues, however, that the study is too general to be relied upon. For its next resource plan, therefore, the Commission will direct Xcel to analyze the capacity for demand response in its service area – and to conduct the study with sufficient rigor that the Commission may rely on the results for evaluating how demand response will influence Xcel's forecasted need for additional resources.²⁰

Xcel indicated that a reliable study of potential demand response resources could be concluded in 9 months, which the Environmental Intervenors asked the Commission to order in February 2013. Instead, the Commission required Xcel to file the study with its next IRP. As a consequence, the record to date is that Xcel's consultant KEMA found the potential for 300 MW of additional demand response on Xcel's system; Xcel has questioned the reliability of the study it commissioned.

It is Xcel's burden to "show that demand for electricity cannot be met more cost effectively through energy conservation and load-management measures."²¹ Xcel has had ample time and opportunity to address the KEMA finding. It has not met its burden to show that its capacity need could not be met through load-management measures.

²⁰ *In the Matter of Xcel Energy's 2011-2025 Integrated Resource Plan*, Docket No. E-002/RP-10-825, March 5, 2013, Order Approving Plan, Finding Need, Establishing Filing Requirements, and Closing Docket, p. 7.

²¹ Minn. Stat. § 216B.243, subd. 3.

D. The Commission Should Adopt The ALJ's Findings With Regard To Capacity Need.

In sum, the ALJ correctly found that the record in this case does not support the need to add the fossil fuel resources that were offered. The Department argues contrary to the facts and its own prior commitments when it states that the Commission's March 5, 2013 Order establishing this docket defined a particular size of capacity need. Moreover, it is inexplicable why the Department is supporting an outdated forecast that overstates capacity need and the selection of fossil fuel resources that have not been shown to be necessary. Overbuilding resources does not benefit consumers; delaying power plant additions, in contrast, does generally have economic benefits. Moreover, the Department has ignored its statutory obligation to support reliance on renewables over fossil fuel resources: "The [Department] may participate fully in hearings before the Public Utilities Commission . . . The [Department] shall support policies stated in section 216C.05."²² Encouraging investment in unnecessary fossil fuel generation is contrary to the policies articulated in section 216C.05, which includes:

greater reliance on cost-effective energy efficiency and renewable energy and lesser dependence on fossil fuels in order to reduce the economic burden of fuel imports, diversify utility-owned and consumer-owned energy resources, reduce utility costs for businesses and residents, improve the competitiveness and profitability of Minnesota businesses, create more energy-related jobs that contribute to the Minnesota economy, and reduce pollution and emissions that cause climate change.²³

Xcel has failed to meet its burden to show that it has a capacity need greater than what can be met by the Geronimo proposal. The Department's arguments for a higher capacity need are not reasonable and lack record support. As a result, the Commission should adopt the ALJ's recommendations on the issue of capacity need.

²² Minn. Stat. § 216C.09(b).

²³ Minn. Stat. § 216C.05, subd. 1.

III. REGARDLESS OF THE SIZE OF XCEL'S CAPACITY NEED, THE COMMISSION SHOULD SELECT GERONIMO'S SOLAR BID BECAUSE XCEL HAS FAILED TO SHOW THAT IT IS NOT IN THE PUBLIC INTEREST.

The ALJ correctly acknowledged that the Minnesota Legislature has established a clear preference for renewable energy resources. Under state law, the Commission cannot approve a new non-renewable energy facility unless the utility proposing the non-renewable resource has shown that a renewable resource is not in the public interest.²⁴ When making its public interest determination under this section, the Commission must consider whether the decision helps the utility to achieve the state's greenhouse gas reduction goals, the renewable energy standard, or the solar energy standard.²⁵ Further, Minnesota law prohibits the Commission from selecting, based solely on costs, a more polluting resource where there is a less polluting resource alternative.²⁶ Thus, even if the Commission determines that Xcel has a capacity need that justifies additional natural gas generation, it still should select Geronimo's bid in combination with a natural gas plant.

A. Xcel Has The Burden To Show That Geronimo's Proposal Is Not In The Public Interest.

The statute places the burden of demonstrating that a renewable energy resource is not in the public interest squarely on the utility seeking to build or contract with a new resource.²⁷ Xcel, not Geronimo or Environmental Intervenors, has the burden here. Unless Xcel can

²⁴ Minn. Stat. § 216B.2422, subd. 4

²⁵ *Id.*

²⁶ Minn. Stat. § 116D.04, subd. 6 (prohibiting state approval of activities that would cause pollution where "feasible and prudent alternatives" exist and stating that "[e]conomic considerations alone shall not justify such conduct.")

²⁷ Minn. Stat. § 216B.2422, subd. 4 ("The commission shall not approve a new or refurbished nonrenewable energy facility . . . , nor shall the commission allow rate recovery . . . for such a nonrenewable energy facility, unless the utility has demonstrated that a renewable energy facility is not in the public interest").

demonstrate that the solar bid is not in the public interest, the solar bid must be selected. On this record, Xcel has not met its burden.

B. No Party Has Shown That The Solar Bid Is Not In The Public Interest.

As a preliminary matter, neither Xcel nor the Department sponsored testimony providing an assessment of the public interest in this case. Instead, the process of bid evaluation relied solely on the economic outputs of the Strategist modeling. Environmental Intervenors submit that a public interest determination must consider more than simply the outputs of Strategist modeling, yet Xcel and the Department rely exclusively on their assessment of the cost of Geronimo’s proposal in arguing that the bid is not in the public interest. The Department and Xcel continue to do so in their exceptions.

The Legislature intended for the Commission to make policy choices affecting Minnesota’s energy resources. The Commission’s role in this case is more than just fact-finder. By statute, the Commission has both legislative and quasi-judicial functions.²⁸ As a result, the Commission is called upon to make choices that are “historically and functionally legislative in character.”²⁹ In analyzing whether a utility has met its burden, therefore, it weighs whether the record “justifies the conclusion sought by the petitioning utility when considered together with the Commission’s statutory responsibility to enforce the state’s public policy [goals] . . .”³⁰

The Commission’s public interest analysis must address the state’s policy goals. Those goals include the provision of reliable service at reasonable rates. But they also include promoting Minnesota’s preference for renewables and giving weight to the value of pollution-free generation, the value of the renewable proposal in achieving the state’s greenhouse gas

²⁸ Minn. Stat. § 216A.05, subd. 1.

²⁹ Minn. Stat. § 216A.02, subd. 2.

³⁰ *Petition of N. States Power Co.*, 416 N.W.2d 719, 722 (Minn. 1987) (discussing burden of proof in rate case).

reduction goals, its value in meeting the new solar energy standard, and the social and economic value of growing Minnesota's solar industry. Weighing these considerations, the ALJ correctly concluded that it would not be in the public interest to add a non-renewable resource to meet the first 71 MW of Xcel's capacity need.³¹

C. Xcel Incorrectly Asserts That The ALJ's Public Interest Determination Relies On The Company Using Geronimo's S-RECs To Satisfy Its SES Obligations.

Xcel's argument that it would be against the public interest to select Geronimo's proposal to meet the solar energy standard ("SES") misses the mark for two reasons.

First, the ALJ did not make his public interest determination based solely on Xcel's need for solar energy. In fact, what the ALJ concludes is that "[t]he record in this proceeding indicates that Geronimo's proposal, when properly analyzed under either a LCOE or Strategist modeling, is the lowest cost resource proposed."³² He goes on to conclude that Geronimo's bid "provide[s] benefits to society in a manner compatible with protecting the natural and socioeconomic environments, including public health."³³ Further, the proposal is consistent with Minnesota's preference for "low-emission, renewable and distributed generation"³⁴ and the bid has the "lowest risks of non-compliance with state and federal policies, rules, and regulations."³⁵ These findings are firmly rooted in the record and are true regardless of whether Xcel uses the Geronimo bid to meet the state's solar energy standard.

Second, Geronimo's bid in this case is not a bid to meet the solar energy standard, it's a bid to meet Xcel's purported capacity deficit. The fact that Geronimo's power plant is solar means that it will have the added benefit of S-RECs. As Xcel points out at page 24 of its

³¹ ALJ Conclusions of Law, ¶ 17.

³² ALJ Conclusions of Law, ¶ 6.

³³ ALJ Conclusions of Law, ¶ 10.

³⁴ ALJ Conclusions of Law, ¶ 12.

³⁵ ALJ Conclusions of Law, ¶ 13.

Exceptions, Geronimo's S-RECs can "serve two mutually exclusive functions- (i) meet the Company's obligations under the new solar energy standard, [or] (ii) raise millions of dollars in S-REC sales." It makes sense, then, to compare Geronimo's bid to the others without assuming Xcel will use Geronimo's S-RECs to meet its own obligations. Instead, the S-RECs are a source of revenue that offsets some of the costs of the Geronimo proposal. When their value is included, as the ALJ pointed out, the Geronimo proposal is clearly the least cost. This is not "double-counting" their value as Xcel alleges because one reaches this conclusion without requiring Xcel to use the S-RECs to meet its own obligations.

Nothing in the ALJ's recommended course of action would require Xcel to use Geronimo's S-RECs to satisfy its obligations under the solar energy standard or prevent the Company from issuing a new solar-specific RFP to acquire energy needed to fulfill the SES. What the record shows is that Geronimo – compared on equal footing to the natural gas proposals and with fair assumptions -- is lower cost. It happens to also be renewable. And as a result, Minnesota statutes dictate that it be selected.

D. The Suggestion That Geronimo's Bid Should Be The Subject Of An All-Solar RFP Is A Red Herring.

Xcel and the Department submit that the public interest is served by having a separate process where only solar bids would compete against one another for energy to meet the standard. For example, the Department states "given that only one solar firm submitted a bid, it is not possible to conclude that Xcel's ratepayers would be getting the best solar resources if the Solar Bid were approved in this proceeding."³⁶ Xcel contends that "[t]his proceeding does not provide any opportunity for the Commission to determine whether Geronimo's proposal is cost-

³⁶ Department Exceptions, p. 5.

effective relative to other competing solar proposals that could also meet the solar energy standard.”³⁷

This argument, while rhetorically appealing, fails for several reasons.

1. The question pending before the Commission is which of the bids proposed is in the public interest.

Whether Geronimo’s proposal is cost-effective relative to other competing solar proposals was not the question confronting the ALJ. The pending question is whether Geronimo’s proposal is a cost-effective option for meeting the identified capacity and energy needs and otherwise in the public interest. The Commission should not be concerned with whether Geronimo is the lowest-cost solar resource hypothetically available to Xcel, as the Department suggests. The relevant question in this docket is how Geronimo’s proposal compares to resources of any kind that have been bid for the purposes of meeting Xcel’s presently identified need.

2. Xcel’s allegation that Geronimo’s proposal is higher-cost than it would be in an all-solar competition is speculation and without record support.

Because the question of whether Geronimo’s proposal is the least-cost solar resource is irrelevant to this docket, no evidence was entered on that issue. Nevertheless, Xcel attempts to raise doubt as to how Geronimo’s proposal would fair in an all-solar RFP process. Xcel states that the question of whether Geronimo is the most cost-effective solar proposal theoretically available “is a significant public interest concern given that the evidentiary record on the cost of Geronimo’s proposal indicates the pricing of the Geronimo bid is higher than what the Company has seen in solar bids from other jurisdictions when adjusted to reflect what the bids’ cost would

³⁷ Xcel Energy Exceptions, p. 20.

be in Minnesota.”³⁸ Xcel’s sole evidence for its statement that the Geronimo bid is relatively expensive is comparison to the *generic solar unit* price that Xcel developed for use in the Strategist model. The cited portion of the transcript describes Xcel’s basis for the solar pricing as “based on bids that we had seen in other jurisdictions, proposed bids in other jurisdictions, adjusted the best we could to reflect what we thought the cost in Minnesota specifically would be.”³⁹

The basis for Xcel’s “generic solar unit” is entirely opaque. In response to Geronimo’s request for the MW and cost assumptions used in the Department’s modeling, witness Steve Rakow responded that the size assumptions for the generic solar unit were “not available.”⁴⁰ Nor are any cost data for the generic solar unit available, according to the Department’s IR Response, which stated that it did not modify the assumptions made by Xcel in its modeling. Thus, the evidentiary record is devoid of information about the size, configuration, location and other critical details that would affect the cost of the “generic solar unit.” Even if such a generic unit were suitable for the purposes of the Strategist model, it cannot be compared to Geronimo’s concrete proposal that reflects actual cost estimates for specific locations. The Department’s and Xcel’s suggestion that Geronimo’s project is not as cost-effective as other solar proposals is not supported by credible evidence, in addition to being irrelevant to this proceeding.

3. The Department’s concern that the Geronimo proposal will consume too much of Xcel’s SES obligation is unwarranted.

The Department expresses concern that the Geronimo project will use up one-third of Xcel’s SES requirement, and therefore there will be “less room” for other solar resources.⁴¹ This

³⁸ *Id.* pp. 20-21, citing Hrg. Tr. Vol. I, at 110.

³⁹ Tr. Vol. 1, at 110:19-23 (Wishart).

⁴⁰ Ex. 59, Engelking Rebuttal, Exhibit EME-3.

⁴¹ Department Exceptions, p.13

argument falsely suggests that the SES creates a cap on the amount of solar generation that Xcel can add to its system. In fact, the SES states that “*at least* 1.5 percent of the utility's total retail electric sales to retail customers in Minnesota [must be] generated by solar energy.”⁴² Moreover, in order to meet the state’s greenhouse gas reduction goals⁴³, Xcel will need to add substantial additional amounts of solar and/or wind resources to its generation portfolio in the coming years. If Xcel has the option before it to acquire solar generation resources cost-effectively, it should take that opportunity.

4. It is in the public interest to install solar as soon as possible.

Earlier installation of a solar generation resource provides additional value to Xcel and its ratepayers in several ways. First, earlier installation means more time over which Xcel can accumulate SRECs, since under the statute, “a solar renewable energy credit associated with a solar photovoltaic device installed and generating electricity in Minnesota after August 1, 2013, but before 2020 may be used to meet the solar energy standard.”⁴⁴ Second, as an early mover on utility-scale solar, Xcel will gain invaluable experience with solar projects and be able to gather the kind of data on the value of solar in serving Xcel’s load that the Department acknowledges is so valuable.⁴⁵ Third, the federal tax credit currently available for solar is set to expire in 2016.

5. There is no evidence that an all-solar bid would lead to lower costs.

Finally, Xcel and the Department provide no evidentiary support for their faulty assumption that a solar-only RFP would provide the most cost-competitive solar bid. The Company claims, for example, that “by requiring solar projects to compete against one another, we believe we will be able to obtain lower-cost proposals than we would without that

⁴² Minn. Stat. § 216B.1691 (emphasis added).

⁴³ Minn. Stat. § 216H.02

⁴⁴ Minn. Stat. § 216B.1691, subd. 2f(f).

⁴⁵ Department Exceptions, p. 5.

competition.”⁴⁶ This statement implies that the only way Geronimo would submit a cost competitive proposal would be if it were to compete with other solar projects. This is completely nonsensical. Geronimo is being evaluated against the other resources responsive to this RFP regardless of their fuel source. Indeed, because gas prices have been quite low in recent years it would be reasonable to assume that Geronimo has submitted its best possible offer so as to be competitive with gas plants. Basic economic theory does not support the assumption underlying Xcel and the Department’s position. If one assumes that solar resources are generally more expensive than natural gas, one would expect the most competitive solar bid where solar is competing against low-cost natural gas, as we had here.

In sum, the ALJ’s focus on the value of Geronimo’s proposal relative to the alternatives in this docket, and his consideration of the pervasive Minnesota law favoring selection of renewable energy projects, was appropriate. The Department and Xcel’s suggestion that acquisition of any solar resources should be deferred to an all-solar RFP would be to the ratepayers’ detriment as it would force Xcel to choose a more expensive resource to meet its presently identified capacity and energy needs.

E. It Was Appropriate For The ALJ To Account For The Value Of Geronimo’s S-RECs.

The Department suggests that it was inappropriate for the ALJ to consider the value of the Geronimo project that would arise from the Minnesota Legislature’s adoption of a SES for the state’s utilities, because the SES was not adopted until after the bids were submitted and therefore not all solar companies were on notice that there would be any particular value attributed to solar resources. The Department’s concern for solar companies who chose not to bid in this proceeding is noted, but it does not outweigh the need for the Commission to be able

⁴⁶ Xcel Energy Exceptions, p. 3.

to consider how significantly changed circumstances affected the value of the bids submitted. For example, if there were significant regulatory changes that would affect the operational cost for a gas plant proposal, surely the Commission would not be prevented from taking those changed circumstances into account. Indeed, the statute *requires* the Commission to consider the “effect of existing or possible . . . federal or state legislation . . .” when evaluating an applicant’s case for a certificate of need.⁴⁷ Moreover, even without the passage of the SES, the renewable credits of Geronimo’s proposal would likely have market value.

The Department takes issue with the ALJ’s consideration of the value of SRECs on other grounds as well. First, it states that “the Commission has not considered the potential values of RECs or the sale of excess capacity in assessing the value of resources to Xcel’s ratepayers.”⁴⁸ The authority cited by the Department is an explanation by its witness, Dr. Rakow, that he “did not include any credit for excess capacity” in his Strategist analysis because he was already concerned that the Strategist model was biased towards larger packages, and assigning a value to excess capacity credits would exacerbate that problem.⁴⁹ This statement does not support the Department’s broad assertion that it is inappropriate to consider potential values of RECs or capacity credits in assessing the value of the resource to Xcel’s ratepayers. Indeed, the presence in this proceeding of the proposal by GRE to sell capacity credits to Xcel is contrary to the Department’s suggestion.

The Department also expresses concern that the value of the S-RECs used by the ALJ lacks evidentiary basis.⁵⁰ While the SREC values offered by Geronimo were estimates based on the value of SRECs in other states with SREC markets, the range of values used by the ALJ and

⁴⁷ Minn. Stat. § 216B.243, subd. 3(2).

⁴⁸ Department Exceptions, p.16 & n.32.

⁴⁹ Exh. 86, Rakow Rebuttal, pp. 13-14.

⁵⁰ Department Exceptions, pp. 16-17.

recommended by Geronimo was highly conservative.⁵¹ No rebuttal evidence was offered to suggest that any other value was appropriate, nor has the Department offered any principled basis to believe that estimates from other states are inapplicable, such as a belief that the SREC market in Minnesota may be glutted. The uncertainty of the value of the SRECs does not make it speculative to assign value to them, and it was proper for the ALJ to rely on the conservative estimates provided by Geronimo.

The ALJ appropriately considered the value of the S-RECs associated with Geronimo's bid, and the Commission should as well.

F. The Commission Has An Opportunity To Further Important Public Policies And Promote The Public Interest By Approving Geronimo's Bid.

The Commission's role in this matter, as stated earlier, is not just fact-finder. It plays an important function in guiding and implementing the energy policy of the state. As noted by the ALJ, it has long been the energy policy of this State to prefer renewables over fossil fuel resources. Minnesota's energy planning and environmental laws are replete with directives to reduce electricity consumption through conservation and to increase the percentage of renewables in the electricity Minnesotans do consume. The policy objectives underlying these statutes are well-known and non-controversial – to conserve dwindling natural resources, to reduce pollution and associated costs, to build a clean energy economy, and to reduce risk (price and reliability) to the system.

The solar bid compares favorably on all these public interest factors:

- The proposal has zero greenhouse gas emissions and is therefore the only bid that is consistent with the state's greenhouse gas reduction goals, which require steep reductions in emissions over the lifetime of these proposals.⁵²

⁵¹ Exh. 59, Engelking Rebuttal, pp. 18-19.

⁵² Exh. 38, Environmental Report, p. 38; Minn. Stat. § 216H.02 (requiring emission reductions below 2005 levels of 15% by 2015, 30% by 2025, and 80% by 2040).

- The proposal uses no fossil fuel, an attribute that both conserves resources and reduces risk to ratepayers due to fuel price fluctuation.
- The proposal furthers Minnesota’s objective to obtain increased amounts of electricity from renewable, and in particular, solar resources.⁵³
- The solar proposal, unlike the other proposals, emits no criteria or hazardous air pollutants.⁵⁴ Likewise the solar proposal, in contrast to the other proposals, requires little to no water resources and will not discharge wastewater.⁵⁵
- The solar proposal offers the benefits of distributed generation, including avoided transmission costs and fewer line losses.⁵⁶
- The solar proposal will create 500 new construction jobs and up to 10 permanent jobs.⁵⁷ Significantly, these new jobs will be in a clean energy industry, meaning workers will gain experience and skills with modern energy technologies.

On all these public interest factors, Geronimo’s solar proposal stands out among the bids.

The Legislature has repeatedly stated its preference for renewables over fossil fuel resources. It is time for the Commission in this docket to implement that preference, adopt the ALJ’s well-reasoned recommendation and proceed with the state’s first industrial-scale solar project.

Geronimo’s proposal is clearly in the public interest.

For all of the reasons discussed here the Environmental Intervenors strongly encourage the Commission to adopt the ALJ’s recommendations.

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Respectfully submitted,

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⁵³ Minn. Stat. § 216B.1691.

⁵⁴ Exh. 38, Environmental Report, p. 39.

⁵⁵ Exh. 38, Environmental Report, pp. 19-20.

⁵⁶ Exh. 61, Beach Rebuttal, p. 7.

⁵⁷ Exh. 38, Environmental Report, p. 31.