

December 18, 2017

**Via Electronic Filing**

Mr. Daniel Wolf  
Executive Secretary  
Minnesota Public Utilities Commission  
121 Seventh Place East, Suite 350  
St. Paul, MN 55101-2147

**Re: *In the Matter of the Formal Complaint and Petition for Relief by Minnesota Energy Resources Corporation Against Northern States Power Company d/b/a Xcel Energy, Docket No. G-011, G-002/C-17-802***

Dear Mr. Wolf:

Minnesota Energy Resources Corporation (“MERC”) submits this letter to briefly respond to certain arguments made in the Department of Commerce, Division of Energy Resources’s (“Department”) Reply Comments in this matter. MERC believes that Northern States Power Company d/b/a Xcel Energy (“Xcel”) is violating various Minnesota statutes by effectively discounting its rates through offering a promotional incentive to United Properties. The Department disagrees, based on its observation that United Properties will take service under Xcel’s Large Demand Billed Service tariff.<sup>1</sup> MERC of course acknowledges that Xcel will technically provide service pursuant to its tariff. But the thrust of MERC’s argument is that Xcel’s promotional incentive allows it to bypass its tariffed rates, despite alleged technical compliance. Thus, by *effectively* discounting its tariffed rates through the promotional incentive, Xcel runs afoul of the numerous statutes prohibiting flexible, unjust, discriminatory, and unreasonably preferential rates. Further, Minnesota’s prohibition against discriminatory, unreasonably prejudicial, and unreasonably preferential rates applies to rates in general, not just those rates set forth in the utility’s tariff.<sup>2</sup>

For instance, Minn. Stat. § 216B.06 specifically prohibits a utility from offering a discriminatory rate “directly or indirectly, by any device whatsoever”:

No public utility **shall directly or indirectly, by any device whatsoever**, or in any manner, charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered by the utility than that prescribed in the schedules of rates of the public utility applicable thereto when filed in the manner provided in Laws 1974, chapter 429, nor shall any person knowingly receive or accept any service from a public utility for a compensation greater or less than that prescribed in the schedules, provided that all rates being charged and collected by a public utility upon January 1, 1975, may be continued until schedules are filed.

<sup>1</sup> See Department of Commerce Reply Comments at 11-14 (Dec. 11, 2017).

<sup>2</sup> See Minn. Stat. §§ 216B.03; 216B.06; 216B.07.

The “device” Xcel is using to effectively charge United a discounted rate is the Natural Gas Competitive Agreement. It is undisputed that United will pay the Large Demand Billed Service minus the dollars paid back to it by Xcel as a “promotional incentive.” One cannot credibly argue that a utility that charges full tariffed rates to a customer only to refund the same amount back to that customer is meeting the statutory requirements to charge tariffed and nondiscriminatory rates. Xcel’s promotional incentive operates no differently and is specifically tied to United taking service from Xcel, with additional payments made to United after it consumes a specific amount of gas service from Xcel. Contrary to the Department’s arguments, Xcel’s use of the Natural Gas Competitive Agreement neither complies with the plain language nor spirit of the law.

The Department also mistakenly claims that MERC objects to the absence of assigned service territories in Minnesota, noting that incumbent utilities are free to compete for new customers. MERC is entirely aware that natural gas utilities do not have assigned service territories, and that they may compete for new customers. However, as reflected in the Department’s comments, MERC is concerned that Xcel is taking an *existing* customer from MERC.<sup>3</sup> As stated in MERC’s Complaint, United chose MERC as its natural gas provider after the City of Eagan denied Xcel’s initial application for a right-of-way permit. MERC provided service to United, and made infrastructure investments to do so. Importantly, this is not a circumstance (as was case with the Vikings) where MERC and Xcel were fighting over which utility would be allowed to build out an entire multi-use development planned over multiple phases. Here, MERC installed all facilities necessary to provide service to the single customer premises. A decision allowing Xcel to supplant that service would establish a dangerous precedent that has nothing to do with assigned service territories but, rather, the ability of one utility to take another utility’s customer. MERC believes that such a result is unlawful and contrary to good policy. MERC asks that the Commission consider these brief comments when ruling on MERC’s Complaint. Thank you for your attention to this matter.

Sincerely,

*/s/ Brian Meloy*

Brian Meloy

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<sup>3</sup> *Id.* at 14-15 (referencing MERC’s argument that Xcel cannot “take a customer away” from MERC).

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

*In the Matter of the Formal Complaint and  
Petition for Relief by Minnesota Energy  
Resources Corporation Against Northern  
States Power Company d/b/a Xcel Energy*

MPUC Docket No. G-011, G-002/C-17-802

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that true and correct copies of **Minnesota Energy Resources Corporation's Reply Comments to Comments made by the Department of Commerce, Division Energy Resources** have been served on this day by e-filing/e-serving to the following:

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Dated this 18<sup>th</sup> day of December, 2017

*/s/ Dylan M. Stanek*  
Dylan M. Stanek