STATE OF MINNESOTA
BEFORE THE
PUBLIC UTILITIES COMMISSION

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

In the Matter of the Petition of Northern States Power Company, d/b/a Xcel Energy, for Approval of a Renewable*Connect Pilot Programs	Docket No. E-002/M-15-985

PETITION FOR REHEARING

Fresh Energy, Wind on the Wires, and Minnesota Center for Environmental Advocacy (collectively "Clean Energy Organizations"), pursuant to Minnesota Statutes Section 216B.27 and Minnesota Rules 7829.3000, hereby petition the Public Utilities Commission (Commission) for a rehearing or reconsideration of the Commission's approval of Xcel Energy's Renewable*Connect pilots.[1] The pilot programs were approved by the Commission in its February 27, 2017 Order Approving Pilot Programs and Requiring Filings (Order).[2] As written, the Order is inconsistent with Minnesota Statutes Section 216B.169, Subdivision 2(b), which requires additional renewable resources. In order to comply with statutory requirements the

[1] This relevant statute and rule do not explicitly require the Commission to stay the effectiveness of its Order pending resolution of this petition, and Clean Energy Organizations do not seek a stay at this time. Because Xcel Energy is in the process of rolling out the Renewable*Connect offering and the resolution of the issue raised in this petition should not change the details of the rollout, Clean Energy Organizations request that the Order not be stayed prior to resolution by the Commission.

[2] Order Approving Pilot Programs and Requiring Filings, *In the Matter of Petition of Northern States Power Company, d/b/a Xcel Energy, for Approval of a Renewable*Connect Pilot Programs*, Docket No. E-002/M-15-985 (Feb. 27, 2017) [hereinafter Order].

Commission should reconsider adopting the joint decision option provided by Clean Energy Organizations and Xcel Energy.

Clean Energy Organizations acknowledge that this statutory conflict was not clearly brought to the attention of the Commission before this filing—but the text of the Order has made the legal conflict apparent. Clean Energy Organizations herein set forth specifically the grounds on which we contend the Order is unlawful, and the best way to cure this deficiency.

I. Additionality Is Required for a Renewable Energy Rate Option Under Minnesota Statutes § 216B.169, Subdivision 2(b).

There is a clear error in the Commission's assertion that, in response to parties' agreement[3] that Renewable*Connect should include additional clean energy resources to offset the pilots' first tranche, "such a requirement is neither required by statute nor compelled by the public interest."[4] This interpretation is contrary to Minnesota Statutes Section 216B.169, Subdivision 2(b):

> Rates charged to customers must be calculated using the utility's cost of acquiring the energy for the customer and must:
>
> 1. reflect the difference between the cost of generating or purchasing the *additional* renewable energy and the cost that would otherwise be attributed to the customer for the same amount of energy based on the utility's mix of renewable and nonrenewable energy sources . . . .[5]

This subdivision's plain language requires the calculation of the rate to be based on the cost of acquiring "additional" renewable energy generation. The Commission is bound to give effect to all words in this subdivision, since a statute should not be read to ignore a word as redundant if at

[3] Xcel Energy and the Clean Energy Organizations came to the Commission with a proposed settlement that would have incorporated sufficient additional resources to cover the 78.3 MWs of wind and solar photovoltaic capacity that are being redesignated in the initial pilot tranche.
[4] Order at 7.
[5] Minn. Stat. § 216B.169, subd. 2(b) (emphasis added). Reproduced in Order at 3.

all possible.[6] A plain reading of this provision is that the Commission can only approve a rate under Section 216B.169 that is calculated based on the difference between an *additional* renewable resource and the customer's rate that would otherwise be charged for existing resources, both renewable and nonrenewable. As a result, Subdivision 2(b) does not allow the Commission to approve a rate based on an existing resource already serving the utility's customers even if that resource is repurposed for a customer offering under this statute.[7]

It was established in party comments and at the Commission hearing that Renewable*Connect is not additional. This was conceded by the World Resources Institute[8] and is further memorialized in the Order, which describes the pilots as "dedicating the output of a portion of the Company's existing renewable generation resources to the programs."[9] As

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[6] The Minnesota Supreme Court has laid out several relevant rules of interpretation:

> Under basic canons of statutory construction, we are to construe words and phrases according to rules of grammar and according to their most natural and obvious usage unless it would be inconsistent with the manifest intent of the legislature. . . . Whenever it is possible, no word, phrase, or sentence should be deemed superfluous, void, or insignificant. *See Owens v. Federated Mut. Implement & Hardware Ins.,* 328 N.W.2d 162, 164 (Minn.1983). We presume that the legislature intended to favor a public interest over a private interest. *See* Minn. Stat. § 645.17(5) (1998).

Amaral v. Saint Cloud Hosp., 598 N.W.2d 379, 384 (Minn. 1999).

[7] A broader reading of the statute suggests Xcel Energy is entitled to offer Renewable*Connect as currently designed to customers without a premium, but the Commission cannot approve a special rate under Minnesota Statutes Section 216B.196, Subdivison 2(b), for non-additional renewable resources. The preceding subdivision, Subdivision 2(a), states that the "utility may offer its customers one or more options that allow a customer to determine that a certain amount of the electricity generated or purchased on behalf of the customer is renewable energy." The omission of "additional" in 2(a) but inclusion in 2(b) is significant: the utility *can* offer renewable customer options regardless of additionality, but without additionality a utility cannot charge a separate rate to recover costs for the service.

[8] World Resources Institute Reply Comments/Amended Initial Comments, *In the Matter of Petition of Northern States Power Company, d/b/a Xcel Energy, for Approval of a Renewable*Connect Pilot Programs,* Docket No. E-002/M-15-985 at 1 (Dec. 7, 2016).

[9] Order at 4.

outlined in Clean Energy Organizations' comments and testimony at the Commission hearing, dedication of existing resources is not "additional." By contrast, WindSource at its inception was clearly additional, with subscriber's commitments leading to the development of new wind generation that was added to Xcel Energy's generation mix over time.[10]

II. Clean Energy Organizations' and Xcel Energy's Decision Option Cures the Conflict.

Before the January 12, 2017 Commission hearing Clean Energy Organizations and Xcel Energy addressed the additionality problem with a new proposal. These parties provided Decision Option 16, which stated:

> As part of Xcel Energy's current wind acquisition process, the Company shall acquire an additional 78.3 MWs of wind beyond the Company's planned acquisition, representing the quantity of system resources used for the R*C and R*CG pilots.

This settlement accounts both for how the utility obtains new resources, and the identified problem of dedicating existing resources for Renewable*Connect instead of building or acquiring additional renewable generation. Also, since this could still be ordered as a part of an ongoing acquisition process, it does not oblige the company to add duplicative acquisition proceedings that would require undue company and Commission resources. Moreover, there is nothing about this settlement that runs counter to the Commission's Order in Xcel's most recent Integrated Resource Plan[11]—a concern raised at the hearing. The Commission's Order in the

[10] Order Approving Renewable Energy Rider as Revised, Clarified, and Modified, *In the Matter of Xcel Energy's Petition for Approval of a Renewable Energy Rider*, Docket No. E-002/M-01-1479 at 2 (May 7, 2002) ("Once Xcel has received a sufficient number of subscriptions, it will enter into a contract to purchase wind energy for the program. Customers will be billed according to the terms and rates of the approved rate schedules under which they are receiving service.").

[11] *See* Order Approving Plan with Modifications an Establishing Requirements for Future Resource Plan Filings, *In the Matter of Xcel Energy's 2016–2030 Integrated Resource Plan*, Docket No. E-002/RP-15-21 (Jan. 11, 2017).

Resource Plan states that "[i]t is reasonable to acquire at least 1,000 MW of wind by 2019. Acquisition of greater than 1,000 MW may be approved upon submission of evidence such as price, bidder, qualifications, rate impact, transmission availability, and location."[12] Xcel Energy's Request for Proposals (RFP) asked for up to 1,500 MW of wind. On March 16, 2017, Xcel filed a proposal for Commission approval to acquire 1,550 MW of wind generation, stating: "Wind generation is at historically low prices and we believe our proposed portfolio will provide substantial benefits to our customers and the communities we serve."[13] An order to accept 78.3 additional MW of wind from the submissions to the RFP does not run afoul of the fact that at least 1,000 MW was deemed reasonable, that even more wind generation was contemplated by the Commission upon evidence of its reasonableness and cost effectiveness, and that Xcel's proposal found even more than 1,500 MW to be cost-effective and beneficial to customers.[14]

Considering that this program, if successful, will result in contracts that lock subscribing customers into rates for the next decade, it is imperative that the Commission ground this initial tranche's rate on a legal basis that will not come into question years down the road. The

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[12] *Id.* at 10.

[13] Supplement Cover Letter, *In the Matter of the Petition of Xcel Energy for Approval of the Acquisition of Wind Generation from the Company's 2016-2030 Integrated Resource Plan*, Docket No. E002/M-16-777 at 1 (March 16, 2017). The Supplement goes on to say: "wind generation is at a historically low price and we believe near-term wind additions present a prudent opportunity to achieve lower carbon emissions while driving down overall system costs." Supplement, *In the Matter of the Petition of Xcel Energy for Approval of the Acquisition of Wind Generation from the Company's 2016-2030 Integrated Resource Plan*, Docket No. E002/M-16-777 at 3 (March 16, 2017) [hereinafter Supplement].

[14] The Supplement strongly suggests that additional wind generation would be highly cost effective. Supplement at 6 ("The response to the RFP was robust with 95 proposals associated with 48 projects from 17 bidders totaling nearly 10,000 MW of nameplate wind generation capacity. . . . The pricing included in many of the RFP responses was attractive with more than 30 responses below $22/MWh on a LCOE basis."). Even if additional resources were more expensive than those already selected, Subdivision 2(b) contemplates charging a premium for additional acquisitions of renewable generation. Thus, it appears to be consistent with the Legislature's intent for the Commission to require additional acquisition even if it is slightly more costly than the "historically low prices" that are otherwise present in the marketplace now.

Commission should not treat this as if it is a short-run pilot with limited consequences—it must get the legal basis right before long-term contracts are signed. We urge the Commission to reconsider adopting the decision option that Clean Energy Organizations and Xcel Energy agreed to in order to solve this additionality problem.

III. Conclusion.

For the foregoing reasons, Clean Energy Organizations respectfully request that the Commission grant this petition for a rehearing or reconsideration of the matters raised herein. Clean Energy Organizations do not seek a stay of the Order pending resolution of the petition and do not intend this petition to delay Xcel's implementation of the pilot tranche, as the requested relief does not alter any of the approved program's rules. Instead, Clean Energy Organizations respectfully request that the Commission amend its order to: adopt decision option 16; and clarify that Minnesota Statutes Section 216B.169, Subdivision 2(b), requires the offering to be based on resources additional to those already serving a utility's customers.

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Respectfully submitted,

/s/ Hudson Kingston

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