



# PowerWorks Wind Turbines LLC

30 December 2013

Minnesota Public Utilities Commission  
121 7th Place East, Suite 350  
Saint Paul, Minnesota 55101-2147  
sent via e-mail to [PublicComments.PUC@state.mn.us](mailto:PublicComments.PUC@state.mn.us)

Attention: Dr. Burl W. Haar, Executive Secretary

**Subject: Xcel Energy should have recommended PowerWorks's proposal as the Energy Production wind project in its RDF RFP based on the Independent Expert's objective and verifiable evaluation**

Dear Dr. Haar,

PowerWorks Wind Turbines LLC ("**PowerWorks**") hereby contests the recommendations made by the Northern States Power Company, doing business as Xcel Energy ("**Xcel**"), as stated in the Reply Comments, dated 12 December 2013 (the "**Comments**"), pursuant to Xcel's Renewable Development Fund ("**RDF**") Request for Proposals, that were submitted to the Minnesota Public Utilities Commission ("**MPUC**") for approval.

PowerWorks acknowledges that Minnesota Statute, Section 116C.779 and the direction provided by the state legislature (the "**RDF Statute**"), the procedures identified in the RDF Request for Proposals, dated 15 February 2013 (the "**RFP**"), and the MPUC orders may provide Xcel with "considerable discretion regarding project selection" (Comments 2) and that Xcel is "not obligated to select projects solely on the basis of project rankings" (Comments 7) established by Sargent & Lundy, the independent third-party evaluator ("**Independent Expert**") selected by Xcel. However, PowerWorks maintains that by placing "greater emphasis... on qualitative criteria in this funding cycle than in previous cycles" (Comments 21), thereby placing less emphasis on the Independent Expert's rankings, Xcel effectively precluded bidders from becoming "fully informed of the RDF's bidding criteria, evaluation process, and Cycle 4 goals" (Comments 6). Additionally, PowerWorks maintains that, contrary to Xcel's representation to the MPUC, the final selection report did not "include a detailed explanation of any deviations from the rankings" (Comments 5), and those details that were provided are verifiably false. In so heavily relying on qualitative criteria and false information, Xcel illegitimately disqualified PowerWorks's proposal for utilizing refurbished components, even though the RFP expressly included refurbished facilities in its definition of new technology (RFP 8), and inexplicably recommended a significantly more expensive project for Minnesota's ratepayers.

As a result, Xcel's "solicitation of Cycle 4 proposals" was neither "transparent" nor "in compliance with the 2013 Order and the statutory criteria" (Comments 7) and the RFP. Therefore, PowerWorks requests the MPUC to reject the recommendations made by Xcel in the

Comments, and award PowerWorks the Energy Production grant based on the Independent Expert's objective and verifiable evaluation.

**1. XCEL PRECLUDED BIDDERS FROM BECOMING “FULLY INFORMED OF THE RDF’S BID CRITERIA, EVALUATION PROCESS, AND CYCLE 4 GOALS.”** Had Xcel made the criteria against which it would actually evaluate projects available to the bidders, PowerWorks would not have bid a project that included wind turbines with remanufactured content, even though Xcel expressly included refurbished facilities in its definition of new renewable projects.

**1.1 Xcel misled bidders as to what would qualify as a “new renewable project” (RFP 8), and thus, failed to inform bidders of the RDF’s actual qualitative criteria.** The RFP states that “in making final selections, [Xcel] will consider the [Independent Expert’s] evaluation as well as the recommendations of the RDF advisory group” (RFP 13). Bidders were informed of the criteria influencing the Independent Expert’s evaluation, likely because Xcel detailed the objective and technical factors that were to be used by the Independent Expert when establishing its “objective technical score” (Comments 6). However, the criteria that actually influenced the RDF advisory group’s recommendations were not made available to bidders.

Only after Xcel submitted its recommendations to the MPUC did Xcel attempt to explain any of the factors that had influenced the RDF advisory group’s decisions. The Comments stated that the RDF advisory group “analyzed projects based on qualitative attributes that conform to the RDF’s mission and the interests in funding an appropriate mix of projects” (Comments 17).

Despite the fact that the RFP expressly equated “new” projects with “refurbished” facilities when it defined a “new renewable project” as either “a newly constructed renewable energy facility or a refurbishment of an existing generation facility that results in an increase in the production of renewable energy” (RFP 8), the most significant of these “qualitative attributes” turned out to be whether projects utilized refurbished technology.

Even though Xcel expressly equated new and refurbished technologies in the RFP and at no point stated or implied that it would disqualify proposals with refurbished technology, the RDF advisory group deliberately chose not to recommend PowerWorks’s proposal for a grant or select it as a reserve project on the grounds that “a proposal to utilize refurbished turbines was disfavored” (Comments Attach P 91). Xcel concluded that this factor sufficiently justified the RDF advisory group’s recommendation of the winning project, with an objective score of 129.57, over PowerWorks’s project, with an objective score of 173.75. In other words, Xcel rejected PowerWorks’s proposal solely based on an illegitimate factor worth 44.18 points, which was over 34% of the winning project’s total objective score.

Therefore, Xcel violated the RDF Statute, the RFP, and the MPUC orders by not fully informing bidders of the RDF’s bid criteria, especially with respect to the ban on proposals that utilized remanufactured technology and content, a ban that unequivocally conflicted with Xcel’s own definition of a “new renewable project” in the RFP (RFP 8).

**1.2 Xcel completely failed to inform bidders of the qualitative “evaluation process,” which indicates a lack of structure.** In an effort to ensure consistency with the RDF Statute, the RFP, and the MPUC orders, “[Xcel] submitted detail on the scoring approach to be used by the [Independent Expert]” (Comments 10) and oversaw the project selection process. While the RFP detailed the criteria the Independent Expert could use when calculating its objective technical scores, which served to provide structure to the Independent Expert’s evaluation, the

RFP did not define or explain the qualitative criteria, or even describe the structure of the RDF advisory group's evaluation process. This lack of structure in the qualitative evaluation process likely explains why Xcel has been unable to provide a detailed explanation of how and where the RDF advisory group deviated from the rankings created by the Independent Expert.

Only after Xcel submitted its recommendations to the MPUC did Xcel make it clear that "the RDF advisory group conducted an all-day meeting to discuss the proposals and reach a Cycle 4 RDF funding recommendation" (Comments 16). In this meeting, the RDF advisory group used "qualitative attributes," including those Xcel obscured from bidders, like the inconsistent ban on refurbished technology, "to differentiate the many similar proposals received" (Comments 17).

Although the Independent Expert scored PowerWorks's proposal 34% higher than the winning project, the RDF advisory group felt that the proposals were similar enough to warrant further review. It was in this further review that the RDF advisory group concluded that PowerWorks's proposal did not do a "good job relative to [the winning project] of satisfying the goals of the RDF" (Comments 17). While Xcel concurred with the RDF advisory group's assessment (Comments Attach P 21), Xcel also validated as "correct and accurate" (Comments 14) the scores of the Independent Expert, which demonstrate that PowerWorks's proposal did the best job of satisfying the RDF's goals for the Energy Production wind project category. How the RDF advisory group managed to disagree with the Independent Expert so sharply on this issue remains unexplained, as does how Xcel was able to concur and validate two opposite positions.

Given that Xcel still has not made it clear how the RDF advisory group determined its level of support for each proposal, Xcel has violated the RDF Statute, the RFP, and the MPUC orders.

**1.3 By failing to inform bidders of the Cycle 4 goals, Xcel recommended a significantly more expensive proposal.** Two of the Cycle 4 goals of the RFP are to fund: "near commercial-scale demonstration projects that produce and/or deliver renewable electric energy" and "renewable energy projects that will increase the market penetration of renewable electric energy in the state at a reasonable cost" (RFP 3-4). Furthermore, the Minnesota legislature has directed that Xcel "must, when feasible and reasonable, give preference to projects that are the most cost-effective for a particular energy source" (Comments 3).

Given Xcel's validation of the use of refurbished technology in the RFP (RFP 8), PowerWorks's proposal, with its remanufactured to like-new condition 100 kW wind turbines, best captured the aforementioned Cycle 4 goals and direction from the state legislature. Because it utilized remanufactured to like-new condition wind turbines, PowerWorks's project would only cost \$2,237.49 per installed kW, whereas the winning project would cost nearly three times more at \$6,383.49 per installed kW. In its objective evaluation, the Independent Expert seems to have understood the significance of this disparity, which is presumably why it awarded PowerWorks the highest score of any wind project.

In rejecting the objective score of the Independent Expert, Xcel seems to have dismissed the stated Cycle 4 goals and the direction of the state legislature, or perhaps let its review be tainted by goals and directives not made available to the bidders. In either case, Xcel did not inform bidders of the goals that would be driving its decision and thus, with respect to Xcel's recommendations that validated the RDF advisory group's decisions, Xcel violated the RDF Statute, the RFP, and the MPUC orders.

Because Xcel precluded bidders from becoming fully informed of the RDF's actual bid criteria, the evaluation process of the RDF advisory group, and the actual Cycle 4 goals, the MPUC should reject Xcel's recommendation, and award PowerWorks the Energy Production grant based on the Independent Expert's objective and verifiable analysis.

**2. XCEL FAILED TO "INCLUDE A DETAILED EXPLANATION OF ANY DEVIATIONS FROM THE RANKINGS" CREATED BY THE INDEPENDENT EXPERT.** In its final selection report, Xcel was required to "include a detailed explanation of any deviations from the rankings for... projects provided by [the Independent Expert]" (Comments 5).

In explaining how or why the RDF advisory group and Xcel allowed the winning proposal to overcome a 44.18 point deficit, which was over 34% of its objective score, Xcel stated: "The advisory group disfavored the proposal to use refurbished wind turbines given the history of mixed results in service and reliability. The advisory group identified a preference to introduce new wind technology by supporting the introduction of new models versus funding the older technology" (Comments Attach K 1). While this falls short of a "detailed explanation," it also highlights a significant mischaracterization in the RFP and error upon which Xcel based its recommendations.

**2.1 Xcel expressly defined a refurbished generation facility as a "new renewable project"; by rejecting PowerWorks's proposal for utilizing refurbished technology, Xcel violated its own RFP.** In the RFP, Xcel specified that: "a new renewable project is considered to be either a newly constructed renewable energy facility or a refurbishment of an existing generation facility that results in an increase in the production of renewable energy" (RFP 8).

The fact that Xcel so defined "new renewable project" but disqualified PowerWorks's proposal for using a small portion of remanufactured components demonstrates that PowerWorks's proposal was disqualified in violation of the terms of its own RFP, and as a result, the RDF Statute, and the MPUC orders. Therefore, the MPUC should reject Xcel's recommendations.

**2.2 The PowerWorks 100 kW wind turbine is not "refurbished" technology.** Regardless of Xcel's definition of a "new renewable project" in the RFP, if the RDF advisory group or Xcel were to have engaged in meaningful analysis, they would have realized that PowerWorks's remanufactured to like-new condition 100 kW wind turbines are, for all practical purposes, "new" turbines. Applicable law supports the notion that refurbished technology can qualify as "new" or freshly/originally manufactured even though the property is not entirely unused. Under the Internal Revenue Code ("**IRC**") § 45, the federal government has declared that:

*"A facility would also qualify as originally placed in service even though it contains some used property, provided the fair market value of the used property is not more than 20 percent of the facility's total value (the cost of the new property plus the value of the used property)."*

Thus, pursuant to IRC § 45, a wind turbine still qualifies as "originally placed in service" (or as PowerWorks interprets this phrase, "new") if the fair market value ("**FMV**") of the used or refurbished parts is less than or equal to 20 percent of the facility's total FMV.

PowerWorks submitted a detailed discussion of the numerous technological improvements made to its wind turbine in its proposal. Upon request, PowerWorks can demonstrate that the FMV of the used property of the 100 kW wind turbine is less than 20 percent of the 100 kW wind turbine's total FMV. As a result, the RDF advisory group and Xcel erred in dismissing the

PowerWorks 100 kW wind turbine as “refurbished” technology, and their recommendations should be rejected as a result.

**2.3 Xcel did not choose to fund “new” models or technology.** Regardless of Xcel's definition of a “new renewable project” in the RFP, the winning proposal included a wind turbine line that was originally introduced 30 years ago, has been installed at over 1,800 sites around the world, and likely has received numerous enhancements (see <http://bergey.com/products/wind-turbines/10kw-bergey-excel>).

Therefore, if Xcel actually rejected PowerWorks's proposal for being “refurbished,” then it should have also rejected the winning proposal for the same reason. On the other hand, since the winning proposal wasn't rejected for being “refurbished,” then PowerWorks's proposal also should not be rejected. Because this mischaracterization was used to dismiss PowerWorks's proposal, Xcel's recommendation should clearly be rejected.

**2.4 The PowerWorks 100 kW wind turbine has proven reliability.** PowerWorks's current fleet of over 800 x 100 kW wind turbines consistently has an operating availability of approx. 97% to 98%. Upon request, PowerWorks can demonstrate this fact from historic operating records.

Nonetheless, Xcel improperly suggested that the PowerWorks 100 kW turbine was unreliable. Given the turbine's high operating availability, this suggestion is simply false. Because PowerWorks's proposal was dismissed on verifiably false information, Xcel's recommendation should be rejected.

While PowerWorks acknowledges that the RDF advisory group and Xcel are entitled to some flexibility when evaluating those proposals that received similar scores from the Independent Evaluator, PowerWorks maintains that Xcel both precluded bidders from becoming fully informed of the RDF's bidding criteria, evaluation process, and Cycle 4 goals and failed to include a detailed explanation of its deviations from the Independent Expert's rankings. In so doing, Xcel violated the RDF Statute, its own RFP, and the MPUC orders. As a result, the MPUC should reject Xcel's recommendation and award PowerWorks the Energy Production grant based on the Independent Expert's objective and verifiable evaluation.

Please contact us if you have any questions.

Sincerely,

PowerWorks Wind Turbines LLC



Bob Eggers  
Legal Counsel

cc: Mr. Mark Ritter, RDF Grant Administrator, Xcel Energy

1 **BEFORE THE**  
2 **STATE OF MINNESOTA**  
3 **PUBLIC UTILITIES COMMISSION**

4 In the Matter of Request by XCEL ENERGY to  
5 issue Renewable Development Fund Cycle 4  
6 Requests for Proposals and Petition for Approval  
7 of a Standard Grant Contract

Docket No. E-002/M-12-1278

8 **POWERWORKS WIND TURBINES LLC'S SUBMISSION OF PETITION TO**  
9 **INTERVENE AND REQUEST FOR CONTESTED CASE PROCEEDING**

10 PowerWorks Wind Turbines LLC ("**Petitioner**") resubmits its third comments, dated  
11 December 30, 2013, attached hereto as Exhibit 1, which are incorporated herein by this reference  
12 ("**Reply Comments**"), in accordance with the State of Minnesota Public Utilities Commission's  
13 ("**Commission**") December 16, 2013 Notice of Extended Period for Reply Comments on the  
14 Renewable Development Fund ("**RDF**") Selection Report and Supplements.

15 Petitioner requests to intervene as a full party for the reasons described in the attached  
16 Reply Comments, pursuant to Minn. Rule 7829.1400, subp. 2.

17 Additionally, Petitioner requests a contested case proceeding for the reasons described in  
18 the attached Reply Comments, pursuant to Minn. Rule 7829.1400, subp. 9.

19 As discussed in the attached Reply Comments, Petitioner submitted a proposal on or  
20 before April 1, 2013, in response to Xcel's RDF Request for Proposals ("**RFP**"). Supposedly  
21 using the objective evaluation from the disinterested third-party expert, Sargent & Lundy (the  
22 "**Independent Expert**"), as well as certain subjective criteria, Xcel selected and recommended  
23 to the Commission one wind project for an Energy Production grant award. Despite submitting a  
proposal with the highest objective score from the Independent Expert, Petitioner was not

1 recommended for the Energy Production grant or reserve list.

2 As discussed in the Reply Comments, Petitioner contests Xcel's selection and  
3 recommendation on two grounds. First, Petitioner believes that by placing greater emphasis on  
4 qualitative criteria in this funding cycle than in previous cycles, thereby placing less emphasis on  
5 the evaluation provided by the Independent Expert, Xcel effectively precluded bidders from  
6 becoming fully informed of the RDF's bidding criteria, evaluation process, and goals. *See*  
7 Exhibit 1. Second, Petitioner believes that, with respect to Petitioner's proposal, Xcel's final  
8 selection report did not include the required explanation of deviations from the rankings created  
9 by the Independent Expert, and that those details that were provided are verifiably false and/or  
10 illegitimate. *See* Exhibit 1.

11 Because the Independent Expert objectively scored Petitioner's proposal (173.75) higher  
12 than the selected wind project (129.57), Xcel should have awarded Petitioner's project the  
13 Energy Production grant. In light of the score disparity, by rejecting Petitioner's proposal on the  
14 grounds that it utilized "refurbished turbines," Xcel has drawn the entire selection process into  
15 question as being arbitrary and unfounded since Xcel expressly defined a "new renewable  
16 project" in the RFP as including "refurbishment of an existing generation facility that results in  
17 an increase in the production of renewable energy".

18 **A. PETITION TO INTERVENE**

19 Pursuant to Minn. Rule 7829.1400, subp. 2, Petitioner hereby petitions the Commission  
20 to intervene as a full party.

21 **1. The Petitioner**

22 Petitioner, PowerWorks Wind Turbines LLC, is a limited liability company formed under  
23 the laws of the state of Idaho. Petitioner is in the business of developing, operating, and selling

1 wind energy systems.

2       The outcome of this proceeding will directly affect Petitioner's submitted proposal, and  
3 as a result, the outcome of this proceeding will directly affect Petitioner. Therefore, Petitioner is  
4 directly interested in the matter at issue in these proceedings and no other party can adequately  
5 represent Petitioner's interests.

6 **B.       REQUEST FOR A CONTESTED CASE PROCEEDING**

7       Pursuant to Minn. Rule 7829.1400, subp. 9, Petitioner hereby requests a full contested  
8 case proceeding with the ability to obtain discovery. A full contested case is required to provide  
9 full transparency and to determine whether Xcel violated its fiduciary duties in administering the  
10 RDF grant(s), whether Xcel followed the criteria provided for by Commission's rulings and  
11 Minnesota law, and whether Xcel allowed improper bias or interests to enter or influence its  
12 decision(s), the decisions of Xcel representatives on the RDF advisory group, or any discussions  
13 regarding the RDF RFP proposals, especially with respect to Petitioner's proposal.

14       These material issues cannot be resolved strictly through written comments. As a result,  
15 Petitioner urges the Commission, in accordance with Minn. Rule 7829.1000, to find that there  
16 are significant and material facts that have not been resolved to the Commission's satisfaction,  
17 and that this resolution can only be achieved through a contested hearing.

18 **C.       CONCLUSION**

19       For the reasons stated above, Petitioner requests the Commission to grant its petition to  
20 intervene, to order a contested case proceeding, and to stay any further action on any of the  
21 projects submitted in response to Xcel's RDF RFP until completion of the contested case  
22 proceeding.

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1 Dated: December 30, 2013

Respectfully submitted,

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/s/ Michael Koebbe

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Michael Koebbe

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Business Development Manager

PowerWorks Wind Turbines LLC

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15850 Jess Ranch Road

Tracy, CA 95377

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Phone: 734.497.7908

Email: [mk@powerworks.com](mailto:mk@powerworks.com)

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1 Exhibit 1



7 30 December 2013

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9 Attention: Dr. Burl W. Haar, Executive Secretary

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highlights a significant mischaracterization in the RFP and error upon which Xcel based its  
recommendations.

10 **2.1 Xcel expressly defined a refurbished generation facility as a "new renewable**  
11 **project"; by rejecting PowerWorks's proposal for utilizing refurbished technology, Xcel**  
violated its own RFP. In the RFP, Xcel specified that: "a new renewable project is considered  
to be either a newly constructed renewable energy facility or a refurbishment of an existing  
generation facility that results in an increase in the production of renewable energy" (RFP 8).

12 The fact that Xcel so defined "new renewable project" but disqualified PowerWorks's proposal  
13 for using a small portion of remanufactured components demonstrates that PowerWorks's  
proposal was disqualified in violation of the terms of its own RFP, and as a result, the RDF  
Statute, and the MPUC orders. Therefore, the MPUC should reject Xcel's recommendations.

14 **2.2 The PowerWorks 100 kW wind turbine is not "refurbished" technology.** Regardless of  
15 Xcel's definition of a "new renewable project" in the RFP, if the RDF advisory group or Xcel  
were to have engaged in meaningful analysis, they would have realized that PowerWorks's  
remanufactured to like-new condition 100 kW wind turbines are, for all practical purposes, "new"  
turbines. Applicable law supports the notion that refurbished technology can qualify as "new" or  
freshly/originally manufactured even though the property is not entirely unused. Under the  
Internal Revenue Code ("IRC") § 45, the federal government has declared that:

16 *"A facility would also qualify as originally placed in service even though it contains some used*  
17 *property, provided the fair market value of the used property is not more than 20 percent of the*  
*facility's total value (the cost of the new property plus the value of the used property)."*

18 Thus, pursuant to IRC § 45, a wind turbine still qualifies as "originally placed in service" (or as  
PowerWorks interprets this phrase, "new") if the fair market value ("FMV") of the used or  
refurbished parts is less than or equal to 20 percent of the facility's total FMV.

19 PowerWorks submitted a detailed discussion of the numerous technological improvements  
20 made to its wind turbine in its proposal. Upon request, PowerWorks can demonstrate that the  
FMV of the used property of the 100 kW wind turbine is less than 20 percent of the 100 kW wind  
turbine's total FMV. As a result, the RDF advisory group and Xcel erred in dismissing the

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4 PowerWorks 100 kW wind turbine as "refurbished" technology, and their recommendations should be rejected as a result.

5 **2.3 Xcel did not choose to fund "new" models or technology.** Regardless of Xcel's  
6 definition of a "new renewable project" in the RFP, the winning proposal included a wind turbine  
7 line that was originally introduced 30 years ago, has been installed at over 1,800 sites around  
8 the world, and likely has received numerous enhancements (see  
9 <http://bergey.com/products/wind-turbines/10kw-bergey-excel>).

10 Therefore, if Xcel actually rejected PowerWorks's proposal for being "refurbished," then it should  
11 have also rejected the winning proposal for the same reason. On the other hand, since the  
12 winning proposal wasn't rejected for being "refurbished," then PowerWorks's proposal also  
13 should not be rejected. Because this mischaracterization was used to dismiss PowerWorks's  
14 proposal, Xcel's recommendation should clearly be rejected.

15 **2.4 The PowerWorks 100 kW wind turbine has proven reliability.** PowerWorks's current  
16 fleet of over 800 x 100 kW wind turbines consistently has an operating availability of approx.  
17 97% to 98%. Upon request, PowerWorks can demonstrate this fact from historic operating  
18 records.

19 Nonetheless, Xcel improperly suggested that the PowerWorks 100 kW turbine was unreliable.  
20 Given the turbine's high operating availability, this suggestion is simply false. Because  
21 PowerWorks's proposal was dismissed on verifiably false information, Xcel's recommendation  
22 should be rejected.

23 While PowerWorks acknowledges that the RDF advisory group and Xcel are entitled to some  
flexibility when evaluating those proposals that received similar scores from the Independent  
Evaluator, PowerWorks maintains that Xcel both precluded bidders from becoming fully  
informed of the RDF's bidding criteria, evaluation process, and Cycle 4 goals and failed to  
include a detailed explanation of its deviations from the Independent Expert's rankings. In so  
doing, Xcel violated the RDF Statute, its own RFP, and the MPUC orders. As a result, the  
MPUC should reject Xcel's recommendation and award PowerWorks the Energy Production  
grant based on the Independent Expert's objective and verifiable evaluation.

Please contact us if you have any questions.

Sincerely,

PowerWorks Wind Turbines LLC



Bob Eggers  
Legal Counsel

cc: Mr. Mark Ritter, RDF Grant Administrator, Xcel Energy

1 Certificate of Service

2 I hereby certify the attached *Reply Comments, Petition to Intervene, and Request for a*  
3 *Contested Case Proceeding* of PowerWorks Wind Turbines LLC have been served this day,  
4 December 30, 2013, in accordance with the directions provided by the Minnesota Public Utilities  
5 Commission.

6 /s/ Michael Koebbe  
7 Michael Koebbe  
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