

**STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE PUBLIC UTILITIES COMMISSION**

In the Matter of the Petition of Northern  
States Power Company to Initiate a  
Competitive Resource Acquisition Process

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

**INITIAL BRIEF OF THE IZAAK WALTON LEAGUE OF  
AMERICA – MIDWEST OFFICE, FRESH ENERGY,  
SIERRA CLUB, AND MINNESOTA CENTER FOR ENVIRONMENTAL ADVOCACY**

November 22, 2013

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## **I. INTRODUCTION**

This case offers the Commission an important opportunity to fulfill Minnesota’s policy objective to build a clean energy future, create clean energy jobs, and make continued headway in reducing pollution from the energy sector. Given the flattening demand on Xcel’s system, the opportunities to select between renewable and non-renewable resources to meet new capacity needs over the near term will be few. In this case, the choice is clear. Geronimo’s solar bid is cost competitive with the non-renewable bids while offering all of the benefits of a renewable resource.

In this Initial Brief, Fresh Energy, Izaak Walton League – Midwest Office, Sierra Club, and Minnesota Center for Environmental Advocacy (collectively “Environmental Intervenors”) discuss the following:

- (1) the need to clarify that Xcel has the burden to satisfy the statutory criteria for a certificate of need in this proceeding;
- (2) that neither Xcel nor the Department has shown that it is not in the public interest to select Geronimo’s bid for a renewable resource; and
- (3) that the need forecast used by Xcel and the Department in their models is not supported by the record.

Because Minnesota law establishes a preference for renewables in the form of a presumption that renewable resources must be selected unless shown not to be in the public interest, and because no party has shown that Geronimo’s solar bid is not in the public interest, the Commission must select the solar bid if it concludes that Xcel has a capacity need at the close of this docket.

**II. THE COMMISSION SHOULD CLARIFY THAT THE CERTIFICATE OF NEED CRITERIA APPLY TO THE COMPETITIVE PROCUREMENT PROCESS IT ADOPTED IN 2006.**

The instant case 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. It requires a “certificate-of-need-like” proceeding because Xcel is one of the bidders.<sup>1</sup> 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.<sup>2</sup> Environmental Intervenors understand the intent of the 2006 Order to be that the criteria, standards and burdens established in the Certificate of Need statute, Minnesota Statutes Section 216B.243, still apply in this competitive procurement even though the certificate of need itself is not required.

The Department of Commerce, however, appears to interpret a competitive procurement proceeding as eclipsing all requirements of the Certificate of Need statute. The Department was asked in discovery whether any of the requirements of Minnesota Statutes Section 216B.243 needed to be proven in this matter. In its response it stated that the process used for this proceeding is modeled after a certificate of need process, but that it is “clear that under Minnesota Statutes no provisions of Minnesota Statutes Section 216B.243 apply to this proceeding.”<sup>3</sup> If that were true, Xcel would have no burden to justify its purported capacity

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<sup>1</sup> *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 at 7 (May 31, 2006).

<sup>2</sup> *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 at 5 (August 28, 2006).

<sup>3</sup> DOC Response to MCEA Information Request Nos. 1-3 (attached as Exhibit A). The Department did not cite to any statute clearly making the provisions of Minn. Stat. § 216B.243

need, no burden to demonstrate that its need could not be met through conservation and load management, and no burden to show that it cannot meet its need with renewable resources.<sup>4</sup>

Environmental Intervenors submit that the Department's interpretation is wrong, and that the intent of the Commission's 2006 Order, and the intent of the current Commission in relying on that order for this proceeding, was to require proof of all certificate of need elements established in Section 216B.243. First, the 2006 Order explicitly says that "[c]ertificate of need filing requirements *and decision criteria* are clear, comprehensive, directly relevant . . . , and easily transferable to the resource procurement process."<sup>5</sup> Second, Xcel's filing in this proceeding presumes that the certificate of need criteria from Section 216B.243 apply. For example, its initial filing is titled "Application for Approval of a Competitive Resource Acquisition Proposal *and for a Certificate of Need.*" In its application, it states that the "Certificate of Need standard [or review] applies," p. 2-5, and it goes on to provide its case for establishing the elements required by Section 216B.243, including the resource need, pp. 3-1 – 3-10, the evaluation of renewables, pp. 5-5 – 5-7, and load management, pp. 5-7 – 5-9. Third, Commission staff has made clear that they do not interpret the Commission's reliance on the 2006 competitive resource procurement procedure as eclipsing the requirements of Section 216B.243. For example, staff explained in response to the Minnesota Chamber of Commerce's request for the capacity need under consideration in this docket to be re-evaluated in light of recent wind acquisitions, that "Xcel needs to prove the need for the facilities ultimately proposed

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inapplicable to this proceeding but we assume it refers to the exemption allowed in Minn. Stat. § 216B.2422, subd. 5. That provision states that a "certificate of need proceeding under section 216B.243 is not required" for a plant selected through a "bidding process approved or established by the commission." It in no way precludes the Commission from relying on the certificate of need statute's requirements and evaluation criteria for whatever process it approves.

<sup>4</sup> See Minn. Stat. § 216B.243, subds. 3, 3a.

<sup>5</sup> Docket No. E-002/RP-04-1752, May 31, 2006 Order at 6-7.

as part of [the competitive resource acquisition] docket.”<sup>6</sup> Finally, adopting the Department’s narrow interpretation is contrary to the overarching policy goals of electricity resource planning: “The legislature finds and declares that continued growth in demand for energy will cause severe social and economic dislocations, and that the state has a vital interest in providing for: increased efficiency in energy consumption, [and] the development and use of renewable energy resources wherever possible...”<sup>7</sup> It makes no sense to ignore these goals simply because a proceeding has multiple bidders. Neither the Legislature nor the Commission intended such an absurd result.

The Department’s interpretation of the Commission’s order in this matter has introduced considerable confusion. The Commission should clarify that the requirements and criteria from Section 216B.243 apply to this proceeding as well as future proceedings that may be conducted under the Commission’s 2006 competitive procurement framework.

**III. UNDER STATE LAW, GERONIMO’S RENEWABLE BID MUST BE ACCEPTED BECAUSE XCEL HAS FAILED TO DEMONSTRATE THAT IT IS NOT IN THE PUBLIC INTEREST.**

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.<sup>8</sup> Moreover, 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

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<sup>6</sup> *In the Matter of the Petition of Northern States Power Company for the Approval of the Acquisition of 600 MW of Wind Generation; In the Matter of the Petition of Northern States Power Company for the Approval of the Acquisition of 150 MW of Wind Generation*, E002/M-13-603/M-13-716, Staff Briefing Papers at 27.

<sup>7</sup> Minn. Stat. § 216C.05, subd. 1.

<sup>8</sup> Minn. Stat. § 216B.2422, subd. 4

energy standard.<sup>9</sup> Further, Minnesota law prohibits the Commission from selecting, based solely on costs, a more polluting resource where there is a less polluting resource alternative.<sup>10</sup>

**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.

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.<sup>11</sup>

In other words, Xcel, not Geronimo or Environmental Intervenors, has the burden here.

Unless Xcel can 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. Neither Xcel (Nor The Department Of Commerce) 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. As a result, Geronimo’s solar proposal was given short shrift. Indeed, the solar proposal was completely excluded from the Department’s “third round” of analysis in which important flexibility factors were vetted.<sup>12</sup>

Given state law’s clear preference for renewable energy, it was not appropriate for the Department to set aside the Geronimo proposal in its final analyses. Environmental Intervenors

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<sup>9</sup> *Id.*

<sup>10</sup> 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.”)

<sup>11</sup> Minn. Stat. § 216B.2422, subd. 4.

<sup>12</sup> Exh. 86 at 4-12 (Rakow Rebuttal).

defer to Geronimo to show how the Strategist modeling assumptions biased the results against its bid.<sup>13</sup> But *even if* the Strategist results were unbiased and had shown the solar bid to be substantially more expensive, the public interest determination would not end there.

The Legislature intended for the Commission to make policy choices affecting Minnesota's energy resources. To the degree the Legislature instructed the Department of Commerce to make policy recommendations, it is to offer testimony that encourages conservation and furthers the development of renewable resources.<sup>14</sup> Here, however, the Department essentially made the policy choice to abandon serious consideration of the only renewable proposal offered in this proceeding, Geronimo's solar bid, suggesting instead that Xcel issue a solar-specific RFP.<sup>15</sup> Its recommendation is based on cost alone.<sup>16</sup> The Department's approach is not consistent with the requirements of the state's energy planning statute, nor is it consistent with its statutory charge to promote renewable energy resources.

The Commission's role in this case is more than just fact-finder. It is vested with the power to make policy decisions. By statute, the Commission has both legislative and quasi-judicial functions.<sup>17</sup> As a result, the Commission is called upon to make choices that are "historically and functionally legislative in character."<sup>18</sup> In analyzing whether a utility has met its burden, therefore, it weighs whether the record "justifies the conclusion sought by the

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<sup>13</sup> See, generally, Exh. 59 (Engelking Rebuttal)

<sup>14</sup> See Minn. Stat. §§ 216A.07, subd. 3 and 216C.09 (b).

<sup>15</sup> Exh. 83 at 13 (Rakow Direct).

<sup>16</sup> *Id.* (concluding that the solar proposal "would not be a reasonable choice (on a cost basis)...")

<sup>17</sup> Minn. Stat. § 216A.05, subd. 1.

<sup>18</sup> Minn. Stat. § 216A.02, subd. 2.



petitioning utility when considered together with the Commission's statutory responsibility to enforce the state's public policy [goals] . . .”<sup>19</sup>

The Commission's public policy 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 reduction goals, its value in meeting the new solar energy standard, and the social and economic value of growing Minnesota's solar industry.

Xcel has failed to provide any analysis of the Geronimo proposal on these important factors and has, therefore, clearly not met its burden to show that the proposal is not in the public interest.

**C. Cost Differences Between The Renewable And Non-Renewable Bids Do Not Demonstrate That The Solar Proposal Is Not In The Public Interest.**

Geronimo pointed out in its testimony that using a “levelized cost of electricity” analysis, its proposal was the least cost of the proposed bids.<sup>20</sup> But even the Strategist model runs, which Xcel and the Department rely on, do not show a significant price difference between scenarios that include the renewable bid and those that do not.

As shown in Figure 1 below, the annual societal costs of selecting the plan that Xcel's Strategist runs said would be the “cheapest,” Plan 1, are essentially the same as the annual societal costs of selecting the “more expensive” Plan 25, which included the Geronimo proposal. (Again, this is without correcting the model's biases, such as the value of the solar credits.) The

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<sup>19</sup> *Petition of N. States Power Co.*, 416 N.W.2d 719, 722 (Minn. 1987) (discussing burden of proof in rate case).

<sup>20</sup> Exh. 59 at 14-15 (Engelking Rebuttal).

total difference between the two scenarios over the entire planning period amounts to only 0.08%.<sup>21</sup>

**[BEGIN TRADE SECRET...**

**... END TRADE SECRET]**

**Figure 1. Annual Societal Costs Through Planning Period of Plan 1 (Cannon + Black Dog 6) and Plan 25 (Cannon + Black Dog 6 + Geronimo).**

While the Strategist modeling runs may show slight cost advantages to the natural gas alternatives, those differences are minute based on Xcel's overall system costs. Other factors in the public interest determination, however, weigh heavily in favor of the renewable proposal.

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<sup>21</sup> The Figure and calculations are based on data provided to Environmental Intervenors from Xcel in response to MCEA Information Request No. 8. Anna Sommer, Sommer Energy LLC, provided the analysis.

**D. The Solar Bid Is In The Public Interest.**

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.<sup>22</sup>
- 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.<sup>23</sup>
- The solar proposal, unlike the other proposals, emits no criteria or hazardous air pollutants.<sup>24</sup> Likewise the solar proposal, in contrast to the other proposals, requires little to no water resources and will not discharge wastewater.<sup>25</sup>

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<sup>22</sup> Exh. 38 at 38 (Environmental Report); Minn. Stat. § 216H.02 (requiring emission reductions below 2005 levels of 15% by 2015, 30% by 2025, and 80% by 2040).

<sup>23</sup> Minn. Stat. § 216B.1691.

<sup>24</sup> Exh. 38 at 39 (Environmental Report).

<sup>25</sup> Exh. 38 at 19-20 (Environmental Report).

- The solar proposal offers the benefits of distributed generation, including avoided transmission costs and fewer line losses.<sup>26</sup>
- The solar proposal will create 500 new construction jobs and up to 10 permanent jobs.<sup>27</sup> 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. Because state law requires the Commission to approve renewable resources over non-renewable resources unless they are shown to be not in the public interest, and because Xcel has not met this burden, the solar bid must be adopted ahead of the natural gas proposals.

**IV. THE NEED FORECAST USED IN THE MODELING FOR THIS DOCKET IS NOT SUPPORTED BY THE RECORD AND IT BIASED THE RESULTS AGAINST THE SOLAR BID.**

The record evidence shows that Xcel will not have the capacity need identified in the Commission's March 5, 2013 Order, but those facts were ignored in the modeling. When it ordered this proceeding, the Commission predicted approximately 150 MW of need in 2017, increasing to up to 500 MW by 2019. According to Xcel, there are two reasons the need identified in March 2013 is no longer accurate. First, the company has a newer forecast, which reduces expected demand and results in need of 93 MW in 2017, increasing to 307 MW in 2019.<sup>28</sup> Second, the capacity need identified by the Commission is based on 2011 rules for calculating MISO reserve margin requirements. Those rules changed significantly in 2013 to ensure reserve capacity for MISO system rather than utility-specific peak demand. As applied to Xcel, the new rules lower its capacity need. The company states that under the anticipated 2014

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<sup>26</sup> Exh. 61 at 7 (Beach Rebuttal).

<sup>27</sup> Exh. 38 at 31 (Environmental Report).

<sup>28</sup> Exh. 46 at 7 (Wishart Direct).

rules, its capacity need for 2017 would be 0 (excess capacity = 84 MW) and its need in 2019 would be only 128 MW.<sup>29</sup>

No party has provided persuasive testimony for why the capacity need based on the new forecast applying the new MISO rules should not supplant the capacity need identified in the Commission's March 2013 Order. Instead, flexible in-service dates and the possibility of cancellations if the need does not transpire have been suggested.<sup>30</sup> Geronimo, the only renewable resource bid, however, was excluded from the Department's "third round" evaluation where flexible in-service dates were introduced. And Xcel, although it allowed its Strategist model to select portions of its own and other parties' bids, did not do the same with the Geronimo bid, despite Geronimo's offer to bring the project on-line in phases of varying sizes.<sup>31</sup>

In reality, the solar bid is likely the most appropriate resource to meet Xcel's lower need. It is both smaller than the other bids, and because it is distributed, could be deployed in stages as need grows. In drawing their conclusions Xcel and the Department ignore these advantages.

Moreover, the much lower forecast puts into question whether any resource at all is needed. As Environmental Intervenors argued in Xcel's IRP proceeding, the company has not fully accessed its conservation and demand response potential.

In sum, the modeling analyses in the record are based on an exaggerated view of Xcel's likely capacity need. This error biased the record in favor of the larger, non-renewable proposals.

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<sup>29</sup> Exh. 46 at 10 (Wishart Direct).

<sup>30</sup> See, e.g., Exh. 86 at 8-10 (Rakow Rebuttal).

<sup>31</sup> 10/20/2013 Hearing Transcript at 106.

**V. CONCLUSION**

The Commission has an opportunity in this case to effectuate the policy goals of Minnesota's energy planning statutes. State law establishes a clear preference for renewable energy and only one proposal before the Commission is a renewable project. To avoid selecting the renewable bid, Xcel had the burden to demonstrate that it is not in the public interest. Xcel has not met that burden. To the contrary, the record evidence demonstrates that even under modeling assumptions that are biased against the solar bid, the cost differences between it and the non-renewable offerings are insignificant. The benefits of approving Minnesota's first large-scale solar installation, meanwhile, are enormous. The solar bid helps to further Minnesota's greenhouse gas reduction goals, it helps to meet the state's renewable and solar energy standards, and it helps to spur new jobs and expertise in green energy technologies. It is in the public interest for the Commission to approve Geronimo's solar bid.

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Respectfully submitted,

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