

HENNEPIN COUNTY  
MINNESOTA

January 17, 2018

PUBLIC DOCUMENT

Mr. Daniel P. Wolf  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place East, Suite 350  
St. Paul, Minnesota 55101

**RE: Request For Reconsideration**  
**In the Matter of Xcel Energy's Petition for Approval of an Amendment to the Hennepin**  
**Energy Recovery Center Power Purchase Agreement**  
**Docket No. E002/M-17-532**

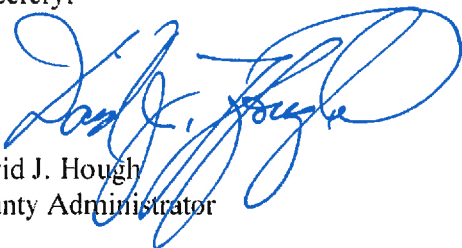
Dear Mr. Wolf:

Hennepin County respectfully submits this Motion for Reconsideration of the Minnesota Public Utilities Commission's December 28, 2017 Order Rejecting Proposed Amendment to Power Purchase Agreement.

We have electronically filed this document with the Minnesota Public Utilities Commission and served copies on the parties on the attached service list.

Please contact me at (612) 348-7574 if you have any questions regarding this filing.

Sincerely,



David J. Hough  
County Administrator



STATE OF MINNESOTA  
BEFORE THE  
MINNESOTA PUBLIC UTILITIES COMMISSION

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

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

IN THE MATTER OF THE PETITION OF  
NORTHERN STATES POWER COMPANY  
FOR APPROVAL OF AMENDMENT NO. 1  
TO A POWER PURCHASE AGREEMENT  
WITH THE HENNEPIN ENERGY  
RECOVERY CENTER

DOCKET NO. E002/M-17-532

**Motion For Reconsideration**

---

Pursuant to Minn. Stat. § 216B.27 and Minn. R. 7829.3000, Hennepin County respectfully submits this Motion for Reconsideration of the December 28, 2017 Order Rejecting Proposed Amendment to Power Purchase Agreement ("Order") of the Minnesota Public Utilities Commission ("Commission") wherein the Commission rejected the proposed First Amendment ("Proposed PPA Amendment") to the Hennepin Energy Recovery Center Electric Sales Agreement ("HERC PPA").

**Standard**

Petitions for reconsideration must specifically set forth the grounds for rehearing or reconsideration.<sup>1</sup> The Commission may then decide to reconsider an order when (1) new issues it has not considered are raised; (2) new and relevant facts are presented; (3) there are ambiguities in the Commission's order; or (4) the Commission is otherwise persuaded to reconsider an order.<sup>2</sup>

**Analysis**

Hennepin County notes that at least one fundamental premise in the Commission's Order on the fair market value and price negotiated was incorrect and that correcting this error will result in a different outcome. Hennepin County asserts that the proper pricing analysis must focus not on current pricing but

---

<sup>1</sup> Minn. Rule 7829.3000, Subp. 2.

<sup>2</sup> *In the Matter of Detailing Criteria and Standards for Measuring an Electric Utility's Good Faith Efforts in Meeting the Renewable Energy Objectives Under Minn. Stat. 216B.1691*, Order After Reconsideration at 9, Docket No. E999/CI-03-869 (Aug. 13, 2004).

must be “fair market value to NSP at the time it is offered”, which are the terms negotiated in 1986 and approved that year by the Commission. In short, NSP and Hennepin County are not negotiating a new agreement but are operating under the terms of an old agreement which provisions must be followed in determining pricing for years 29 through 35 of the agreement. The Proposed PPA Amendment must be reviewed in light of the fact that it is a 7 year extension of an existing approved agreement, which was offered in 2014, not 2017.

The HERC PPA negotiated in 1986 is a 28-year agreement which provides the Seller, Hennepin County, with the exclusive right to extend the agreement an additional seven years at the “fair market value to NSP at the time [the electrical output] is offered”. (Ex. A). The pertinent section of the 1986 PPA is found in Section 7.13 which provides:

Section 7.13 Term of Agreement. This Agreement shall be effective upon execution and shall continue in effect until 28 years after the Commercial Operation Date. If Seller decides to continue to operate the plant after the first 28 years, NSP will purchase the electrical output offered to NSP by Seller at its fair market value to NSP at the time it is offered, for up to an additional 7 years of plant operation.

(Id., p. 28) (Emphasis Added). The Commission approved Section 7.13 and other terms of the HERC PPA in an order issued on July 29, 1986. (Ex. B).

It is important to note that Section 7.13 does not establish the fair market value at the time negotiations commenced or concluded or at the time negotiations were approved by the PUC. Instead, the fair market value is determined in Section 7.13 at the time that Hennepin County decided to operate HERC beyond 28 years and offered the electrical output to NSP. The electrical output for the seven year extension period was first offered by Hennepin County to NSP at a meeting on April 16, 2014. (Affidavit of Randy Kiser, Ex. C.). There is no factual dispute on this date.

In its December 28, 2017 Order, the Commission rejected the Proposed PPA Amendment noting that the Commission’s review is “focused on whether the purchase price under the proposed PPA amendment reflects a reasonable approximation of the current fair market value of the HERC’s electrical output.” (Emphasis Added). Hennepin County respectfully submits, however, that any pricing decision must be based on an analysis not of the current fair market value but the value at the time the electrical output was offered by Hennepin County to NSP.

Hennepin County cannot control any factor other than when it offered the power to NSP under this HERC PPA. It therefore would be inappropriate to assess the price after many intervening factors or resource decisions could have been made. The language in the HERC PPA is helpful in that sense, in that it provides a finite point in time to negotiate on and base a decision on, rather than an ever changing analysis of what “current” would be.

Furthermore, the Commission relied on the Department of Commerce (“Department”) analysis of current “forecasted MISO market prices.” Hennepin County contends that even if the Commission were to base a determination on the current fair market value, it must not look to the MISO capacity auction price, which is based on a one year forward price of capacity and not valid for longer terms,

such as the seven year extension contemplated in the PPA amendment. Rather, it should look to other measures of capacity value currently included in NSP's rate structure such as the embedded capacity value in the CIP program, curtailable rates, solar capacity value, the cost of comparable resources such as combined cycle, and the capacity value used as a basis for the IRP decision. There were several similar contracts negotiated in 2014, as well as resource investments subsequently approved by the Commission based on need. The initial filings in this proceeding were not focused on 2014 contracts or prices and Hennepin County notes that this analysis was not included in the Department filings.

While the parties had extensive discussions about the value of capacity in the extension from the start of discussions in 2014 through 2017, the method of cost recovery for NSP does not have an impact on Hennepin County. Hennepin County, therefore, did not play a material role in allocation between capacity and energy in filings leading up to the hearing in this matter. However, Hennepin County believes an unintended consequence of NSP's inability to recover capacity costs from the fuel clause adjustment rider resulted in devaluing HERC's value of capacity. The decision in this proceeding must not put economic harm on Hennepin County, which is in conflict with the language and intent of the HERC PPA.

In the Department's Reply Comments submitted on September 11, 2017, the Department recommended a proxy price of \$5/kW-month for HERC's capacity noting the following:

In summary, the capacity value is an important feature of the HERC PPA, was priced separately in the past, and NSP offers no compelling evidence that capacity has suddenly lost value. Therefore, the Department continues to recommend that, for the extension period, the Commission require NSP to recover the energy-related costs through the FCA and the capacity related costs through base rates. NSP's most recent resource plan calculated the avoided capacity cost of a generic combustion turbine; see Table 7 on page 15 of Appendix J of NSP's petition in Docket No.E002/RP-15-21. Based upon this information, the Department recommends that the Commission determine the capacity value to be \$5 per kW-month for the duration of the extension period and that such costs are to be recovered through base rates.<sup>3</sup>

While Hennepin County concurs with this approach generally, the Department relied on the 2015 IRP and should have instead considered the prior IRP since the energy and capacity were offered in 2014. Hennepin County does not propose that \$5 per kW-month is the appropriate value, rather that the approach is pertinent and would be weighed in the supplemental filing requested below.

### **Conclusion**

In conclusion, it is clear to Hennepin County that the Commission decision was not made in light of 2014 pricing and the fact that it is a 7-year extension. Both of these are material issues not adequately presented or weighed and therefore support reconsideration. Hennepin County requests that the PUC

---

<sup>3</sup> See Department's Comments submitted on September 11, 2017, page 5. Hennepin County notes that the Department submitted additional comments on November 14<sup>th</sup> agreeing with NSP that the MISO capacity auction price most accurately reflects the fair market value of the capacity. However, the Department provided no rationale for changing its perspective.

consider the above arguments for reconsideration and grant Hennepin County an additional sixty (60) days to supplement the record with pertinent examples of applicable fair market value analysis supportive of both 2014 pricing as well as longer-term pricing, and other pertinent factors. We believe that further documentation and analysis will demonstrate the reasonableness of the pricing in the Proposed PPA Amendment.

Dated: January 17, 2018

Hennepin County

## CERTIFICATE OF SERVICE

I, Patricia L. Sample, hereby certify that I have this day, served a true and correct copy of the following document to all persons at the addresses on the attached list by electronic filing, electronic mail, courier, interoffice mail or by depositing the same enveloped with postage paid in the United States mail at St. Paul, Minnesota.

**Hennepin County**

**MOTION FOR RECONSIDERATION**

Docket Number **E002/M-17-532**

Dated this 17<sup>th</sup> day of **January 2018**

/s/ Patricia L. Sample

Administrative Assistant

# **EXHIBIT A**

RESOURCE RECOVERY ELECTRIC SALE AGREEMENT

between

NORTHERN STATES POWER COMPANY

and

HENNEPIN ENERGY RESOURCE CO., LIMITED PARTNERSHIP



# EXHIBIT B

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Harry Seymour Grump  
Barbara Beerhalter  
Cynthia A. Kitlinski  
Robert J. O'Keefe  
Darrel L. Peterson

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Petition of  
Hennepin Energy Resource Company,  
Limited Partnership for an Order  
Resolving the Disputes Relating  
to the Purchase by Northern States  
Power Company of Energy and Capacity  
from the Operation of a Solid Waste  
Recovery Facility Located in  
Hennepin County, Minnesota

Docket No. E-002/CI-86-176

ORDER APPROVING ELECTRIC  
SALE AGREEMENT

PROCEDURAL HISTORY

Pursuant to an agreement dated August 6, 1985, and amended December 17, 1985 (the Agreement), between Hennepin Energy Resource Company, Limited Partnership (HERC) and Hennepin County, Minnesota (the County), HERC will design, construct, own, operate and maintain a solid waste resource energy facility (the Facility) to process large volumes of municipal solid waste delivered to it to produce steam for heating and cooling and to generate electric power.

The terms of the Agreement between HERC and the County required HERC to negotiate an electric sales agreement with Northern States Power Company (NSP) or another suitable electric utility for the sale of the electricity generated by the Facility to be built by HERC. The revenues from the sale of the electricity will be shared by the County and HERC. The County will use its share of the electrical revenues to reduce the fees paid by its residents for the processing of solid waste.

Prior to the Agreement between HERC and the County, the County had discussions with NSP regarding the terms of an Electric Sales Agreement which resulted in a draft of a proposed Electric Sales Agreement dated May 22, 1985. The County provided HERC with the May 22, 1985 draft of the Electric Sales Agreement and background information.

Between September, 1985 and February, 1986, HERC and NSP met to negotiate a mutually acceptable Electric Sales Agreement. Those negotiations stalled.

On March 31, 1986, HERC filed a Petition with the Minnesota Public Utilities Commission (the Commission). The Petition was filed pursuant to Minn. Stat. § 216B.164, subd. 5 (1984) as amended by Minn. Laws 1986, ch. 425, § 45, and Minn. Rules, part 7835.4500.

The Petition requested the Commission to resolve contractual disputes between HERC and NSP relating to NSP's purchase of electricity and capacity to be provided from HERC's operation of the Facility.

The Petition stated that NSP offered the standard contract terms and that these were not completely satisfactory to HERC. HERC identified the following issues as being disputed: capacity payment refunds, minimum capacity factor, proxy plant, capacity payment adjustments, back-up power cost, arbitration, liability insurance, force majeure clause, transmission gains resulting from the location of the project, and interconnection cost terms and conditions.

NSP filed a letter on April 3, 1986, stating that it, too, sought a contested case hearing because material facts were in dispute. It stated that the Office of Administrative Hearings should conduct the hearings.

On April 7, 1986, the Commission issued its Notice and Order for Hearing in this matter.

While the matter was in hearing during the first week of June, HERC, NSP, the County, and the Minnesota Department of Public Service (DPS) informed the Administrative Law Judge (ALJ), Richard De Long, who was conducting the hearings, that they had reached a settlement, and that there was no need for further hearing. On July 10, 1986, HERC, NSP, DPS, and the County submitted a Resource Recovery Electric Sale Agreement (Electric Sale Agreement) to the ALJ stating it represented a settlement of this matter. On July 15, 1986, the ALJ certified the matter to the Commission.

#### FINDINGS AND CONCLUSIONS

The Commission has jurisdiction over this matter pursuant to Minn. Stat. § 216B.164 (1984). Minn. Stat. § 216B.164, subd. 5 (1984) as amended by Minn. Laws 1986, ch. 425, § 45 requires the Commission to resolve contractual disputes between an electric utility and a solid waste resource recovery facility located in Hennepin County within 120 days of the filing of the petition, if that petition is filed prior to April 1, 1986.

The Commission has reviewed the Electric Sale Agreement and finds that the rates established in it for committed capacity, committed energy, excess energy, and high capacity factor energy fairly approximate the costs NSP will avoid through the purchase of energy and capacity from the HERC's facility.

Secondly, the Commission finds that the payment of the rates established in the Electric Sale Agreement will not result in a subsidy to the HERC facility by either NSP or its ratepayers. The Commission concludes that this Electric Sales Agreement is an appropriate settlement of the disputed issues in this matter and should be approved.

#### ORDER

1. The Resource Recovery Electric Sale Agreement between Northern States Power Company and Hennepin Energy Resource Company, Limited Partnership is hereby approved.

2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

*Janet H. Gonzales, for:*

Mary Ellen Hennen  
Executive Secretary

SERVICE DATE:  
MEH:RC:sj  
#0461F

JUL 29 1986

( S E A L )

# EXHIBIT C

MINNESOTA PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF  
NORTHERN STATES POWER  
COMPANY FOR APPROVAL OF  
AMENDMENT NO. 1 TO A POWER  
PURCHASE AGREEMENT WITH THE  
HENNEPIN ENERGY RECOVERY  
CENTER

AFFIDAVIT OF  
RANDY L. KISER

Exhibit C

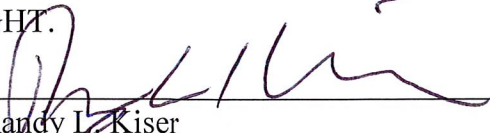
DOCKET NO. E002/M-17-532

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF HENNEPIN )


RANDY L. KISER, being first duly sworn upon oath, deposes and states:

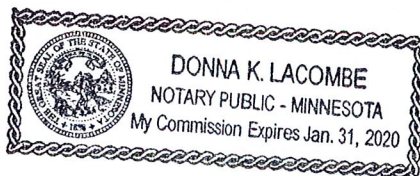
1. I work for Hennepin County and am employed as the Operations & Compliance Manager for the Environment and Energy Department.
2. I was one of several Hennepin County representatives at an initial meeting with Xcel wherein Hennepin County informed Xcel of its intent to continue operation of the Hennepin Energy Recovery Center and Hennepin County's request to extend the 1986 Electric Sales an additional seven years.
3. The meeting was held at the Department of Environment and Energy offices in the 701 Building, 701 Fourth Avenue South, Minneapolis, Minnesota 55415.
4. To the best of my memory, the meeting was attended by Andy Sulko of Xcel Energy, Roel Ronken, Enrique Vinas and David McNary of Environment and Energy.
5. The meeting took place on or about April 16, 2014.
6. I have attached to the second page of this affidavit a true and correct copy of a page from my calendar which reflects the date of the meeting.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

By:   
Randy L. Kiser

Subscribed and sworn to before me  
This 17<sup>th</sup> day of January, 2018.

  
Notary Public  
My Commission expires 01/31/2020



Label releases also in your letter that lack parts of related financial documents.  
-George Washington

16

Wednesday

April 2014

Daily Notes

Journal of the American Society of International Law

10:00 Meet with Bill Swick

Bill will provide hourly description data  
R. E. will up to find at some time

New Power Purchase Agreement  
Possible extension = 10 new PPA

Start  
with

Resource Allocation Group calculates  
rate of AEPAC for future PPA  
-Streamlined

AEPAC may have unique & positive  
attributes for NCA

PPA process takes 3-4 months

David Lee will keep file