

August 2, 2017

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

RE: **Comments of the Minnesota Department of Commerce, Division of Energy Resources**  
Docket No. E002/PA-17-528

Dear Mr. Wolf:

Attached are the comments of the Minnesota Department of Commerce, Division of Energy Resources (Department) in the following matter:

Petition for Approval to Sell 365 Acres of Sherco Land.

The Petition was filed on June 30, 2017 by:

Aakash H. Chandarana  
Regional Vice President, Rates and Regulatory Affairs  
Northern States Power Company  
414 Nicollet Mall  
Minneapolis, MN 55401

The Department recommends that the Minnesota Public Utilities Commission (Commission) **approve the petition**. The Department is available to respond to any questions the Commission may have.

Sincerely,

/s/ STEVE RAKOW  
Analyst Coordinator

SR/lt  
Attachment

## Before the Minnesota Public Utilities Commission

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### Comments of the Minnesota Department of Commerce Division of Energy Resources

Docket No. E002/PA-17-528

#### I. INTRODUCTION

On June 30, 2017 Northern States Power Company, doing business as Xcel Energy (Xcel or the Company) filed the Company's *Petition for Approval to Sell 365 Acres of Sherco Land* (Petition) pursuant to Minnesota Statutes § 216B.50. The Petition seeks Commission approval of two transactions to sell a total of about 365 acres of land located at the Sherburne County Generating Station (Sherco) in Becker, Minnesota.

The first transaction involves an option agreement for the sale of approximately 50 acres of land to Northern Metals LLC (Northern Metals). The second transaction involves an option agreement for sale of 315.2 acres of land to Jet Stream LLC (Jet Stream). Both of the transactions involve the sale of land that was previously maintained as buffer around the Sherco site. Due to the improved environmental controls that have been installed at Sherco, the Company has concluded that the land is no longer necessary as a buffer.

The Company requests that the Commission:

- approve the land sales according to the terms and conditions stated in the option agreements;
- approve the proposed accounting treatment of the sales revenue from the transactions, including a variance to Minnesota Rules 7829.3200, so the gains can be passed on to customers through the fuel clause adjustment (FCA); and
- grant a variance to Minnesota Rules 7825.1800, subpart B as it relates to the information required under Minnesota Rules 7825.1400, subparts F through I.

Below are the comments of the Minnesota Department of Commerce, Division of Energy Resources, Energy Regulation and Planning (Department) regarding the Petition.

## II. DEPARTMENT ANALYSIS

### A. GOVERNING STATUTES

The Company filed the Petition pursuant to Minnesota Statutes § 216B.50, which states in part:

No public utility shall sell, acquire, lease, or rent any plant as an operating unit or system in this state for a total consideration in excess of \$100,000, or merge or consolidate with another public utility or transmission company operating in this state, without first being authorized so to do by the Commission. ... If the Commission finds that the proposed action is consistent with the public interest, it shall give its consent and approval by order in writing. In reaching its determination, the Commission shall take into consideration the reasonable value of the property, plant, or securities to be acquired or disposed of, or merged and consolidated.

In the Petition Xcel proposes to sell land for a total consideration in excess of \$100,000. The remaining question is whether the land qualifies as an operating unit or system. This question is discussed below.

Finally, the Petition qualifies as a miscellaneous tariff filing. Minnesota Rules part 7829.1300 contains the completeness requirements for miscellaneous filings. The Department reviewed the Petition for compliance with the completeness requirements and concludes that the Petition is complete.

### B. MINNESOTA STATUTES § 216B.50 DETERMINATION

#### 1. *Operating Unit or System*

Minnesota Statutes § 216B.50 requires that no public utility shall sell “any plant as an operating unit or system” without first being authorized so to do by the Commission.” The question is how to define an operating unit or system. The Commission’s December 14, 1998 *Order Finding Jurisdiction and Approving Property Transfer* (1998 Order) in Docket No. E017/PA-98-1345 clarified the definition of an operating unit or system:

Otter Tail claimed that the Commission lacked authority over this property transfer because the sale of the Wahpeton Division Office did not meet the statutory standard of the sale of “any plant as an operating unit or system.” Minn. Stat. § 216B.50, subd. 1. The Company pointed to an earlier Commission decision finding that NSP’s sale of an abandoned truck maintenance and repair center did not meet the statutory standard.<sup>1</sup>

The Commission finds that the Wahpeton Division Office is an essential part of Otter Tail's Minnesota operating system and is therefore covered by the statute. Providing electric service requires not just power plants, but the repair, meter reading, customer service, and administrative functions performed in the Wahpeton Division Office. As Otter Tail notes in its reply comments, all these activities "play an integral role in keeping the lights on."

The Commission decision on which the Company relies is not on point, since the finding of no jurisdiction in that case rested not just on the fact that the facility was not a generating plant, but on the fact that, at the time the sales agreement was reached, it was not being used for any company purpose.

<sup>1</sup> *In the Matter of the Petition of Northern States Power Company for Approval of the Sale of the Long Lake Service Center*, Docket No. E002/PA-95-260, ORDER DISMISSING PETITION (August 23, 1995).

In this case, the Department notes that Xcel's most recent rate case was just completed (Docket No. E002/GR-15-826) where the costs of the land parcels were included in rates, unless Xcel can demonstrate that the Company's initial case excluded such costs. (No party recommended exclusion of the costs in that rate case.) If the land parcels were not needed for any company purpose, then the costs should not have been included in base rates. Given that the costs are being charged to ratepayers, the Department concludes Minnesota Statutes § 216B.50 applies to the proposed transaction.

## 2. *Decision Criterion*

Minnesota Statutes § 216B.50 establishes a single test:

If the Commission finds that the proposed action is consistent with the public interest, it shall give its consent and approval by order in writing. In reaching its determination, the Commission shall take into consideration the reasonable value of the property, plant, or securities to be acquired or disposed of, or merged and consolidated.

Xcel concludes that the proposed transaction is in the public interest for four reasons:

- the purchase price for each transaction is reasonable and supported by an independent appraisal;
- given the significant gains that will result from these sales along with the many years this land has been in-service, Xcel intends to pass all of the net gains back to customers;

- both transactions will provide significant benefits—including substantial capital investment, increased tax base, and at least 85 jobs—to the Becker community; and
- the relocation of Northern Metals’ recycling facility will facilitate the settlement between Northern Metals and the Minnesota Pollution Control Agency.

The Department agrees with Xcel that the transaction is in the public interest for the above reasons.

### *3. Information Requirements*

Minnesota Rules 7825.1800, subpart B requires the Company to provide various information set forth in Minnesota Rules 7825.1400 for a transfer of property. In the Petition Xcel provided Items A through E. Items F through J are relevant to a capital structure filing and required for purposes investigating the issuance of securities. Xcel concludes that this information has no direct relevance or application to ascertaining whether the land sales at issue in this Petition are consistent with the public interest and thus requests a variance of these filing requirements for purposes of this Petition. The Department agrees with Xcel that investigating the issuance of securities is not relevant to the Petition.

Minnesota Rules 7829.3200 allows the Commission to vary its rules if the Commission finds that:

- A. enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- B. granting the variance would not adversely affect the public interest; and
- C. granting the variance would not conflict with standards imposed by law.

The Department’s analysis of the variance requirements is as follows:

- Excessive Burden—if the Commission does not approve a variance the Company will have to provide detailed information that has no bearing on the matter at hand.
- Public Interest—the requested variance is in the public interest due to the anticipated cost savings, because all parties involved support the proposed transaction, and because the required information would not further the investigation.
- Standards Imposed by Law—the variance would not violate any standards imposed by law.

Therefore, the Department recommends that the Commission approve a variance to allow Xcel not to provide the information set forth in Minnesota Rules 7825.1400, items F through J.

*C. REVIEW OF COST RECOVERY*

As indicated on page one of the Petition, Xcel requests a variance so as to pass the gains from the transactions to customers through the FCA. To do so Xcel would need two variances. First, Xcel would require a variance to Minnesota Rules 7825.2500 which states, in part:

- Provisions for automatic adjustment of charges must encompass:
- A. Changes in cost resulting from changes in the federally regulated wholesale rate for energy purchased and changes in the cost of fuel consumed in the generation of electricity. This provision is entitled electric energy adjustment.

Second, Xcel would require variance to Minnesota Rules 7825.2600, subpart 2 which states, in part:

The adjustment per Kwh is the sum of the current period cost of energy purchased and cost of fuel consumed per Kwh less the base electric cost per Kwh.

Minnesota Rules 7829.3200 allows the Commission to vary its rules if the Commission finds that:

- A. enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- B. granting the variance would not adversely affect the public interest; and
- C. granting the variance would not conflict with standards imposed by law.

The Department's analysis of the variance requirements is as follows:

- Excessive Burden—if the Commission does not approve a variance the Company will be unable to flow the gains from the transaction through to ratepayers, unnecessarily increasing customer costs.
- Public Interest—the requested variance is in the public interest due to the anticipated cost savings and because all parties involved support the proposed transaction.
- Standards Imposed by Law—the variance would not violate any standards imposed by law.

Therefore, the Department recommends that the Commission approve a variance to Minnesota Rules 7825.2500 and 7825.2600, subpart 2.

### **III. DEPARTMENT RECOMMENDATION**

The Department recommends that the Commission:

- approve the proposed land sales according to the terms and conditions stated in the option agreements;
- approve a variance to Minnesota Rules 7825.2500 and 7825.2600, subpart 2 to allow Xcel to flow the land sale transactions with Northern Metals and Jet Stream through the FCA; and
- grant a variance to Minnesota Rules 7825.1800, subpart B as it relates to the information required under Minnesota Rules 7825.1400, subparts F through I.

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## CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce  
Comments**

**Docket No. E002/PA-17-528**

**Dated this 2<sup>nd</sup> day of August 2017**

**/s/Sharon Ferguson**



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