MINNESOTA DEPARTMENT OF COMMERCE

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July 21, 2015

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: **Comments of the Minnesota Department of Commerce, Division of Energy Resources**
Docket No. E002/M-15-619

Dear Mr. Wolf:

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

> Northern States Power Company d/b/a Xcel Energy's Petition for Approval of a Power Purchase Agreement with Best Power International, LLC.

The petition was filed on June 25, 2015 by:

> Paul J Lehman
> Manager, Regulatory Compliance & Filings
> Xcel Energy
> 414 Nicollet Mall
> Minneapolis, MN 55401

The Department recommends **approval, with modifications, of portions of the Petition**, and requests that Xcel provide further information in Reply Comments. The Department will provide a complete recommendation upon review of Xcel's Reply Comments, and is available to answer any questions the Commission may have.

Sincerely,

/s/ SAMIR OUANES
Rates Analyst

SO/lt
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE
DIVISION OF ENERGY RESOURCES

DOCKET NO. E002/M-15-619

I. SUMMARY

On June 25, 2015, Northern States Power Company, doing business as Xcel Energy (Xcel or the Company) petitioned the Minnesota Public Utilities Commission (Commission) for approval of a Power Purchase Agreement (PPA) for solar power between Xcel and Best Power International, LLC (Seller or Best Power).

The Company is also requesting approval to recover Minnesota's portion of the power purchase costs pursuant to Minn. Stat. §216B.1645 through the fuel clause rider. In addition, Xcel seeks to count these energy purchases toward the solar energy standards (SES) of Minn. Stat. §216B.1691.

According to the PPA, Best Power will construct, own and operate a 718 kW_{ac} (kilowatt alternating current) solar powered electric generating facility (Project) on a site located in Blue Earth County.[1] The term of the PPA covers a period of 15 years from the Commercial Operation Date, with an option to extend the PPA for a period of up to 5 years.[2]

II. BACKGROUND

On November 29, 2012, Northern States Power Company d/b/a Xcel Energy (Xcel or the Company) filed a notice of its intent to proceed with the fourth funding cycle of its Renewable Development Fund (RDF) program and a petition for approval of standard grant contracts for certain RDF projects.

On February 6, 2013, the Commission issued an Order (2013 Order) approving Xcel's request for proposals (RFP) and standard grant contracts. The Commission's 2013 Order set

[1] Source: Attachment A of the instant filing, page 1 of 41.
[2] Source: Section 2.1 of the proposed PPA, page 8 of 41.

several requirements for the RFP process and required Xcel to submit its final project selections to the Commission for approval.

Xcel issued its RFP on February 15, 2013, and accepted proposals through April 15, 2013. The Company received 67 qualifying proposals with a combined funding request of $133.5 million, more than four times the available funding.

On July 29, 2013, Xcel filed its RDF Cycle 4 selection report, recommending selection of 20 projects with a total price tag of $30 million. Xcel requested that the Commission approve its recommended grant awards and list of reserve projects.

On August 9, 2013, Xcel filed a supplement to its selection report, providing additional details about the selection process.

On September 13, 2013, Xcel filed a second supplement to its selection report correcting several scoring errors.

On September 27, 2013, the Division of Energy Resources of the Minnesota Department of Commerce (DOC or the Department) filed comments requesting that Xcel combine its selection report and supplements into one document to facilitate Commission review of the selection process. The Department also requested that Xcel further explain its biomass project selections and clarify the process it intends to use to fund reserve projects.

On December 12, 2013, Xcel filed reply comments providing a full record of the selection process, a scoring audit, and a response to comments submitted by the Department and other stakeholders.

On January 20, 2014, Xcel filed a letter stating that additional funds had accumulated in the RDF account during 2013 and recommending that the Commission approve another $12 million to fund reserve projects and increase higher-education grants.

On March 11, 2014, the Commission issued an order (2014 Order) approving Xcel's recommended energy production (EP) projects, research and development (R&D) projects, higher-education block grants, and reserve-project list, as set forth in the Company's December 12, 2013 reply comments. The Commission also required Xcel to apply the additional funding proposed in Xcel's January 20, 2014 letter to fund the projects numbered 1-9 on Xcel's reserve list.

The Project was included in the list of recommended EP projects.[3] The following summary of the Project was provided under Attachment P of Xcel's December 12, 2013 reply comments:

> Installed Capacity: 907 kW_{DC} [kilowatt direct current]
>
> Project Goal: To provide an increased knowledge of solar by installing a photovoltaic facility that will utilize 1,000 Vdc platform, versus a 600 Vdc platform, which will provide a process for local electrical inspectors to understand the 1,000 Vdc system
>
> Project Description: A ground-mounted photovoltaic (PV) facility will be constructed on the School Sisters of Notre Dame (SSND) campus in Mankato, MN. The Mankato campus of the Central Pacific Province of the SSND, located on Good Counsel Hill in Mankato, Minnesota is where the proposed solar park would reside. The campus has strongly pursued sustainability for many years. They have a "Green Habit Campaign" which is an initiative of the SSND Green Team to recognize and promote sustainable living practices. By having a large-scale solar park built on their campus, they could not think of a better way to lead and teach sustainability to their local community. The campus is located near the northwest quadrant of US Highway 14 and North Victory Drive. Best Power Int'l, LLC (BPI), will lease approximately five acres of land from SSND over a 20-year agreement. BPI will own, operate, and maintain the system. Electricity generated will be sold to Xcel Energy.
>
> The Solar Park will consist of approximately 3,020 polycrystalline silicon PV panels. The panels will be supported by a foundation consisting of driven galvanized steel piles. The racking will be fixed, facing at an angle of 190 degrees from north to increase the amount of energy produced in the afternoon that will provide more benefit to Xcel ratepayers than a South facing array. The Solar Park will be the first large-scale solar project to be implemented utilizing a maximum operating voltage of 1,000 Vdc. By switching to a 1,000 Vdc platform, from the typical 600 Vdc platform, savings in wire size, other BoS components, as well as installation time will help drive down the cost of solar in the industry

[3]Source: Attachment J of Xcel's December 12, 2013 reply comments in Docket No. E002/M-12-1278, available at:https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={3F1E3771-E1C6-4DE7-8115-545B7342E8FE}&documentTitle=201312-94546-01

Anticipated Benefits:

- Economic benefits through the creation of jobs during construction and for operation and maintenance
- Renewable electric generation during periods of peak power
- Emission reductions
- Introduction of new 1,000 Vdc technology
- Availability of production data and cost data for educational and research opportunities

Measurable Outcomes:

- Certification of 907 kW_{DC} installed PV capacity
- Certification of appropriate interconnections
- Generation of electricity
- Cost benefit analysis of a 1,000 Vdc solar system over a 600 Vdc solar system
- Post-construction interview with local electrical inspector

Recommendation: The RDF advisory group strongly supported this project based on the price of energy and a certain degree of novelty. The 1000 Vdc technology has been promising in other places (*i.e.*, California, Europe, and Canada) and this facility may help move the regional solar industry into new areas and possibly contribute to higher efficiencies. The location in Mankato would also provide high solar energy visibility.

Company Perspective: The Company concurs with the advisory group funding recommendation.

On October 3, 2014, Xcel filed a grant contract for the Project to comply with the 2013 Order.

The 2013 Order requires Xcel to:

> …file all grant contracts with the Commission. If a grant contract executed with a winning bidder contains no changes from the standard form contract for EP or research and RD projects, the grant contract shall be filed with the Commission (and in the docket) for informational purposes only. However, if a final grant contract deviates from the standard form contract, the Commission requires grant contract to be filed with the Division of Energy Resources of the Minnesota Department of Commerce (DOC or the Department) for compliance review.

The Department has agreed either to file a compliance letter in the proceeding if there are no issues or to bring any identified issues that cannot be resolved to the Commission for decisions.

As stated by Xcel, the grant contract for the Project contained no changes from the standard form contract for EP projects. As a result, no Commission action was required.

The total funding amount granted is $900,000, which is structured so that payments are made only when the project has achieved commercial operation.[4]

III. PROGRESS REPORT

Xcel's most recent RDF Status and Progress Report, dated April 28, 2015, provided the following update on the Project's status:[5]

> **Project Summary:** This project is to provide an increased knowledge of solar by installing a 907 kW photovoltaic facility that will utilize a 1,000 Vdc platform, versus a 600 Vdc platform, a ground-mounted photovoltaic (PV) facility will be constructed on the School Sisters of Notre Dame (SSND) campus in Mankato, Minnesota.
>
> **1st Quarter Activity:** Work continues to obtain an Interconnect Agreement (IA) and negotiate a Power Purchase Agreement (PPA). The technical review of the IA was completed in the last quarter and final IA will not be available until construction has been completed. Best Power continues to work on obtaining its IA. Best Power responded to a draft PPA on January 26, 2015 and is awaiting comments from Xcel Energy. There has been no construction-related activity during the winter months. Contingent on development of the IA and PPA, the final design and procurement of equipment is anticipated to begin in the spring of 2015.

The Department notes that Exhibit B, "Critical Path Schedule," of the Project's grant contract provides for about two quarters for construction and assembly during the Commissioning phase, after the end of the Procurement phase. As a result, the Project would only achieve commercial operation after 2015.

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[4] Source: Instant filing at 7, and Xcel's October 3, 2014 informational filing in Docket No. E002/M-12-1278 at page 31 of 68, available at: https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={8882C4FF-D5CC-489C-90DC-CFA63A7B8BA1}&documentTitle=201410-103560-02

[5] Source: https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={D95987C5-AD55-4068-A8C5-2508718AEBEA}&documentTitle=20154-109743-01

For completeness of the record, the Department recommends that Xcel provide in reply comments a copy of its second quarter 2015 update on the Project (EP4-5) from the Company's upcoming July 2015 RDF Quarterly Status and Progress Report in Docket No. E002/M-12-1278.

While the capacity of the Commission-approved Project was identified as 907 kW_{dc}, the Department also notes that the project capacity identified in the proposed PPA is 718 kW_{ac}. For clarity of the record, the Department recommends that Xcel reconcile in reply comments the difference between these two numbers and fully explain whether and how the difference may or may not have affected the selection of the Project. The Department also recommends that the Commission require Xcel to identify, discuss and justify any changes to the characteristics of any Commission-approved RDF project in any subsequent filing related to this project, including but not limited to a request for PPA approval.

IV. DEPARTMENT ANALYSIS

The Department examines the proposed PPA for six main issues:

- Whether the proposed PPA price is reasonable,
- Whether Xcel's ratepayers would be appropriately protected from the financial risks of the Project,
- Whether Xcel's ratepayers would be appropriately protected from the operational risks of the Project,
- Whether the curtailment provisions are appropriate.
- Whether Xcel's request to recover the PPA's combined energy and capacity costs through the FCA pursuant to section 216B.1645 is reasonable, and
- Whether the Project is eligible for Minnesota's SES.

The next six sections address these issues successively.

A. PROPOSED POWER PURCHASE AGREEMENT PRICE

The proposed PPA price starts at $72.54/MWh during calendar year 1,[6] escalating at a rate of 2 percent on the first of each calendar year, and ends at $97.63 during the remainder of calendar year 16.[7] This payment is for net energy and capacity purchased by Xcel delivered to the Point of Delivery during the Term.[8] It includes compensation for renewable energy credits associated with the net energy and capacity purchased by Xcel during the Term.[9]

[6] As discussed in Section III, calendar year 1 would start after 2015.
[7] Source: Appendix E, page 50 of 56 of the instant filing.
[8] Source: Section 2.3 (a) of the proposed PPA.
[9] Source: Section 2.7 of the proposed PPA.

The Department's review of the annual price schedule (bid price) submitted by Best Power in response to the RFP shows that the proposed PPA price in any given year would be lower than the bid price in that year.[10]

As discussed above, the Project was selected in a competitive bidding process. The Project, including the grant proposal bid price, was selected by the RDF Advisory Group and approved by the Commission.

The Department concludes that the price to be paid by Xcel for the power provided by the Project during its first 15-year term is reasonable.

The Department notes that the proposed PPA includes language allowing for its extension for a period of up to five years:[11]

> No later than six (6) months prior to the end of the Term, the Parties may extend this Agreement ("Extension") for a period up to five (5) years. The Extension shall be in writing and signed by a duly authorized officer or representative of the applicable Party or Parties. In NSPs sole discretion it may file and request approval of the Extension and the payments to be made to Seller pursuant to the Extension from the MPUC. If: (1) within sixty (60) Days of filing the MPUC fails to issue an order on NSPs request for approval; or, (2) the MPUC declines to approve the Extension or approves the Extension subject to conditions that are unacceptable to NSP in its sole discretion, NSP may terminate the Extension upon written notice to Seller, with no further obligations to Seller.

Since the proposed PPA is silent with respect to the price to be paid by Xcel during any such extension and since the selection of the Project was not based on the Project's pricing after the initial 15-year term of the proposed Project, the Department's analysis and comments herein are limited to the initial term of the proposed PPA. The Department recommends that Xcel clarify in reply comments that the Company will request Commission approval of any such extension or lack of extension, if Xcel deems it appropriate or inappropriate to pursue such extension.

The Department finally notes that Xcel's March 2, 2015 response to discovery, during the Department's review of the grant contract of another project (EP4-15), indicated that the bid prices submitted by participants in response to the RFP were nominal bid prices. To alleviate any possible misunderstanding or confusion and to ensure an apples-to-apples comparison of the proposed projects in future RDF cycles, the Department recommends that the reference to real dollars (instead of nominal dollars) be deleted from any energy spreadsheet to be filed with any future application for RDF funding.

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[10] The Project's bid price data is available on page 59 of 68 at Xcel's October 3, 2014 informational filing in Docket No. E002/M-12-1278.
[11] Source: Section 2.1 of the proposed PPA.

B. FINANCIAL RISKS

There are two financial risks that may have negative impacts on Xcel's ratepayers. The first is a seller default and termination of a “front-loaded” PPA during the early years of the contract when the price exceeds the contract levelized price. The second is the entitlement by a lender or other party to take over the Project and terminate the PPA, as a result of the seller's failure to pay debt.

1. Seller Default

In this PPA, the risk of front loading is eliminated since the PPA price increases over the life of the Project. Therefore, an early termination of the proposed PPA would not result in overpayments by Xcel’s ratepayers.

2. Take-Over Issues

The proposed PPA also includes specific features that minimize the negative impacts on Xcel's ratepayers if another party takes over the Project. These features include restrictions on the transfer of the Project (Sections 4.3 and 4.4).

Section 4.3 requires Best Power to demonstrate to “NSP's satisfaction that the proposed changes [merger or consolidation] will not adversely affect the ability of Seller [Best Power] or any successor entity to perform its obligations under this Agreement [proposed PPA]” before any merger or consolidation. However, Section 4.4 only requires Best Power not to lease or sell its interest or title in the Project’s assets, “without NSP’s consent, which shall not be unreasonable withheld.”

The Department notes that the language provided under section 4.3 provides more clarity and protection to Xcel’s ratepayers than the one provided under section 4.4. Therefore, the Department recommends that the following language under Section 4.4,[12] “without NSP’s consent, which shall not be unreasonable withheld,” be replaced by:

> … without the prior written consent of NSP, which shall not be unreasonably withheld, receipt of which will be contingent upon Seller's demonstration to NSP's satisfaction that the proposed changes will not adversely affect the ability of Seller or any successor entity to perform its obligations under this Agreement.

After reviewing these features in the proposed PPA and with the recommended clarification discussed above, the Department concludes that Xcel's ratepayers would be reasonably protected from the financial risks of the proposed PPA.

[12] Source: Section 4.4 (a)-(b).

C. OPERATIONAL RISKS

The operational risks are the risks that the Project will not be built or operated as expected. These risks include a complete shutdown or a partial shutdown of the project due to technical problems or penalties from agencies due to operational issues. In the case of a partial shutdown, ratepayers must be assured that their payments for the energy are reduced accordingly. In the case of a complete shutdown, Xcel would need to find long term replacement power, which may be more expensive.

The proposed PPA includes specific features that minimize the negative impacts on Xcel's ratepayers if the Project is not built or operated as expected. These features include:

1. Best Power's commitment to design, install, operate, maintain and repair the Plant in accordance with Prudent Electric Industry Practice (Section 4.1);
2. Payments only for net energy and capacity actually delivered to Xcel (Section 2.3.a);[13] and
3. Provision ensuring that Best Power is responsible for complying with environmental regulations (Sections 4.2.b and 4.2.c).

The Department notes that section 4.1.g of the proposed PPA states:

> No later than 60 days following the Effective Date of this Agreement, Seller shall conduct a Phase I environmental investigation of the Site and shall provide Company with a copy of the report summarizing the Phase I environmental investigation of the Site, together with any data or information generated pursuant to such investigation. The report shall include disclosure of any Environmental Contamination identified in the investigation and confirm that such Environmental Contamination has been remediated or is capable of being remediated and that the Site remains appropriate for its intended use by Seller. Seller shall promptly inform Company if due to any Environmental Contamination Seller is constrained in a way that will limit, reduce, interfere with or preclude Seller's ability to perform its obligations under this PPA, along with a statement of whether and to what extent this circumstance may limit or preclude Seller's ability to perform under this PPA. Seller shall provide Company with written recommendations to overcome any such issue(s) that would allow Seller to fully perform under this PPA. Seller shall promptly disclose to Company the presence of any such Environmental Contamination or the existence of any enforcement, legal, or regulatory action or proceeding relating

[13] Except for curtailment issues discussed by the Department in section IV.D below.

> to such alleged violation or alleged presence of Environmental Contamination.

The Department recommends that Xcel discuss in reply comments whether and to what extent there are circumstances that may limit or preclude Best Power's ability to perform under the proposed PPA. If so, the Department recommends that Xcel discuss in reply comments whether and why the Company is satisfied that any such circumstances will not adversely affect the ability of Best Power to perform its obligations under the proposed PPA.

As pointed out by Xcel, "[m]ost PPAs typically include a security provision in the event that the Project does not achieve commercial operation by an agreed upon date or otherwise not operate in accordance with the PPA."

The Company justified the fact that no security fund requirement was included in the proposed PPA because "this PPA will not receive RDF grant funds until the project has achieved commercial operation." However, this justification does not address the issue of ratepayers' protection after the commercial operation date in the situation where the Project would not operate in accordance with the PPA. As discussed above, if this situation occurs, Xcel may have to buy more expensive replacement power.

The Department notes that the most recent (March 24, 2015) Commission-approved PPAs for solar projects included the following features to protect both Xcel and its ratepayers from the operational risks discussed above:[14]

> These features include a Security Fund and payments only for energy actually delivered to Xcel (except for curtailment issues discussed by the Department below). Additionally, the PPA includes restrictions on the sale or transfer of the solar facility, provisions to allow Xcel to monitor the operational aspects of the project and to verify compliance with certain aspects of the Project. Finally, any curable or other material breach of the PPA by the Seller must be cured within 60 days. Failure to do so allows Xcel to terminate the contract and draw on the Security Fund to compensate for any losses caused by such underperformance events.

In the absence of a security fund requirement, the Department recommends that Xcel address in reply comments whether and how ratepayers would be protected in the situation where the Project would "not operate in accordance with the proposed PPA."

The Department will provide a complete recommendation upon review of Xcel's reply comments.

[14] Source: Department's December 8, 2014 comments at 9 in Docket No. E002/M-14-162.

D. CURTAILMENT PROVISIONS

In principle, only if the curtailments are initiated by Xcel, and Best Power is able to produce and deliver solar energy, Xcel must pay for the curtailed energy. Xcel would not make curtailment payments in other circumstances. If, after including these payments, the price is still reasonable, curtailment payments should be approved for recovery from ratepayers.

Sections 5.4 and 5.5 of the proposed PPA contain provisions to ensure that the Project will continue to receive payments for energy it would have generated during any period of compensable curtailment.

Non-compensable curtailments are curtailments resulting from, among other events: emergency,[15] force majeure,[16] failure of seller to maintain the necessary permits, and failure of the seller's equipment.[17]

Compensable curtailments are curtailments for reasons (Qualifying Production Loss Events) other than non-compensable events, such as: lack of transmission capacity, lack of transmission service, and transmission loading relief procedures. Article 5.5 (b) of the proposed PPA provides the definition of compensable curtailed energy.

The Department notes that the compensable curtailment provisions are necessary to maintain the integrity of the transmission system. Furthermore, the payments for curtailed energy are needed to maintain the financial viability of the Seller.

The proposed PPA stipulates that payments per MWh for compensable curtailment are the same as the payments that would have been received by the Seller absent the curtailment.[18]

Therefore, the Department would normally conclude that the curtailment provisions of the proposed PPA are appropriate.

However, Xcel indicated that the Project will connect to the Company's system "at the distribution level with no need to involve MISO."[19] The Department notes that, under similar circumstances, Xcel executed and the Commission approved a solar PPA that did not include a curtailment provision.[20] For clarity of the record in this matter, the Department recommends that Xcel explain and justify in reply comments the need to include a curtailment provision in the proposed PPA given that it was not included under similar circumstances in another Commission-approved solar PPA.

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[15] Emergency is defined in section 1.17 of the proposed PPA.
[16] Force majeure is defined in section 6.1 of the proposed PPA.
[17] Source: Section 5.5 (a) of the proposed PPA.
[18] Source: Section 5.5 (d) of the proposed PPA.
[19] Source: Instant filing at 6.
[20] Source: Commission's June 25, 2010 Order in Docket No. E002/M-09-1481.

The Department also noted that Section 5.4 of the proposed PPA states that "any lost production that is the result of NSP using non-firm transmission service shall be compensated for by NSP as a Qualifying Production Loss Event pursuant to Section 5.5." For clarity of the record in this matter, the Department recommends that Xcel explain and justify in reply comments the use of non-firm transmission service given that it may result in curtailment payments according to sections 5.4 and 5.5 of the proposed PPA.

E. COST RECOVERY

As in previous Commission-approved RDF PPAs, the proposed PPA presents a unitary price, i.e., a price designed to recover both energy and capacity costs without separately pricing the capacity and energy components. The Commission's fuel clause rule does not allow capacity charges to flow though the fuel adjustment.[21] Capacity charges are established in rate proceedings, while the costs of fuel and purchased energy are adjusted in the fuel clause.

However, Minnesota Statute section 216B.1645, subdivision 2 states:

> Subd. 2. **Cost recovery.** The expenses incurred by the utility over the duration of the approved contract or useful life of the investment and expenditures made pursuant to section 116C.779 [Funding for Renewable Development] shall be recoverable from the ratepayers of the utility, to the extent they are not offset by utility revenues attributable to the contracts, investments, or expenditures. Upon petition by a public utility, the commission shall approve or approve as modified a rate schedule providing for the automatic adjustment of charges to recover the expenses or costs approved by the commission under subdivision 1, which, in the case of transmission expenditures, are limited to the portion of actual transmission costs that are directly allocable to the need to transmit power from the renewable sources of energy. The commission may not approve recovery of the costs for that portion of the power generated from sources governed by this section that the utility sells into the wholesale market.

The Department notes that, in its June 10, 2003 Order, the Commission found that "in the context of a Renewable Development Fund (RDF) project such as the Crown Hydro Project a reasonable interpretation of Minnesota Statute Section 216B.1645, subdivision 2 is that the statute takes precedence over fuel clause rule language." [22] As a result, the

[21] The FCA Rules solely authorize adjustments of rates to reflect chances in the cost of energy delivered to customers from those costs authorized by the Commission in the utility's most recent general rate case. The Rules do not authorize automatic adjustment of rates based on increased capacity costs. See Minnesota Rules, Part 7825.2390 and Part 7835.4000.

[22] See the Commission's June 10, 2003 Order in Docket No. E002/M-03-547.

Commission authorized Xcel to recover the Crown Hydro PPA's energy and capacity costs through the FCA.

Subsequent to the June 10, 2003 Order, the Commission made similar findings in the context of RDF projects which involved unitary priced PPAs.[23]

Therefore, consistent with Minn. Stat. §216B.1645, and past Commission practice, the Department will recommend that the Commission authorize Xcel to recover the Best Power PPA's combined energy and capacity costs through the FCA. The Department will also recommend that the Commission require Xcel to offset its recovery of costs by any revenues Xcel receives from any and all sources as a result of this PPA. To this end, the Department will recommend that the Commission require Xcel to report in its annual automatic adjustment reports on whether Xcel obtains any revenue from any source as a result of the PPA and to itemize any such revenues by source and amount.

F. SES ELIGIBILITY

During the 2013 legislative session, Minn. Stat. § 216B.1691, the statute establishing Minnesota's Renewable Energy Standard (RES), was amended to add a solar energy standard (SES). In addition to the obligations in the RES, by 2020 public utilities will be required to generate or procure electricity from solar energy sufficient to serve 1.5% of the utility's Minnesota retail electric sales.

If the proposed PPA is approved, Xcel stated that "the Company will apply the solar energy purchased from Best Power to meet our SES requirements under Minn. Stat. §216B.1691."

The Company has not provided information in its filing to support a determination by the Commission that the solar energy purchased from Best Power is SES-eligible. The Department invites Xcel to develop its arguments for counting the energy toward the SES in its reply comments, to ensure that this issue is sufficiently developed in this record to allow the Commission to make a determination on the SES-eligibility of the Project.[24]

In prior proceedings before the Commission concerning REO/RES resources, the Commission found that the renewable energy generated by a project is eligible for

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[23] See the Commission's December 1, 2006 Order in Docket No. E002/M-06-1295 and the Commission's July 13, 2007 Order in Docket No. E002/M-06-1197.

[24] Relevant Commission Orders discussing the process for energy produced in renewable PPAs to be counted toward the RES or SES include: Order issued June 1, 2004, Docket E999/CI-03-869, establishing which utilities are subject to the REO/RES and standards for demonstrating compliance; Order issued October 19, 2004 (same docket), implementing Minn. Stat. section 216B.1691, Order Issued December 18, 2007 (same docket), establishing a shelf life for RECs, requiring generation units to register in MRETS; Order issued December 4, 2008 (same docket), establishing that only RECs registered in MRETS may be used to measure RES compliance; Order issued April 25, 2014, Docket E999/CI-13-542, establishing shelf life for solar RECs used to meet the SES and requiring solar facilities to be registered in MRETS for demonstrating compliance with the SES.

Minnesota's REO/RES when the project meets the statutory definition of eligible energy technology and the energy from the facility will be used to serve Xcel's system.[25]

The Project meets the statutory definition of eligible energy technology as it will generate electricity from a solar generation system. In addition, as discussed above, the energy produced from the Project would be transmitted to Xcel's distribution system.

Therefore, consistent with the previous Commission findings described above, the Department will recommend that the Commission find that the renewable energy generated by the Project is at least eligible for Minnesota's RES.

V. RECOMMENDATIONS

The Department recommends that the following language under Section 4.4.a-b, "without NSP's consent, which shall not be unreasonable withheld," be replaced by:

> … without the prior written consent of NSP, which shall not be unreasonably withheld, receipt of which will be contingent upon Seller's demonstration to NSP's satisfaction that the proposed changes will not adversely affect the ability of Seller or any successor entity to perform its obligations under this Agreement.

The Department recommends that the Company provide in reply comments:

- A copy of its second quarter 2015 update on the Project (EP4-5) from the Company's upcoming July 2015 RDF Quarterly Status and Progress Report in Docket No. E002/M-12-1278.

- A reconciliation of the difference between the project capacity used in the selection of the Project and the project capacity identified in this instant filing, and fully explain whether and how the difference may or may not have affected the selection of the Project.

- A clarification that the Company will request Commission approval of any extension or non-extension for a period of up to five years if Xcel deems appropriate or inappropriate to pursue such extension.

- A discussion on whether and to what extent there are circumstances that may limit or preclude Best Power's ability to perform under the proposed PPA. If so, the Department recommends that Xcel discuss in its reply comments whether

[25] See the Commission's July 19, 2006 Order in Docket No. E002/M-04-864, the Commission's December 1, 2006 Order in Docket No. E002/M-06-1295, the Commission's July 13, 2007 Order in Docket No. E002/M-06-1197, and the Commission's September 14, 2011 Order in Docket No. E002/M-11-490.

and why the Company is satisfied that any such circumstances will not adversely affect the ability of Best Power to perform its obligations under the proposed PPA.

- A discussion on whether and how ratepayers would be protected in the situation where the Project would “not operate in accordance with the proposed PPA,” in the absence of a security fund requirement.

- An explanation and justification for the need to include a curtailment provision in the proposed PPA given that it was not included under similar circumstances in another Commission-approved solar PPA.

- An explanation and justification for the use of non-firm transmission service given that it may result in curtailment payments according to sections 5.4 and 5.5 of the proposed PPA.

- Its arguments for counting the energy toward the SES, to ensure that this issue is sufficiently developed in this record to allow the Commission to make a determination on the SES-eligibility of the Project.

The Department recommends that the Commission require Xcel to identify, discuss and justify any changes to the characteristics of any Commission-approved project in any subsequent filing related to this project, including but not limited to a request for PPA approval.

To alleviate any possible misunderstanding or confusion and to ensure an apples-to-apples comparison of the proposed projects in future RDF cycles, the Department recommends that the reference to real dollars (instead of nominal dollars) be deleted from any energy spreadsheet to be filed with any future application for RDF funding.

The Department will provide a complete set of recommendations upon review of Xcel’s reply comments.

/lt

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/M-15-619

Dated this 21st day of July 2015

/s/Sharon Ferguson

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