

**State of Minnesota**  
**DEPARTMENT OF COMMERCE**  
**DIVISION OF ENERGY RESOURCES**

**Utility Information Request Response**

Docket Number: E002/CN-12-1240

Date Request Received: October 3, 2013

Requested By: Minnesota Center for Environ. Advocacy

Date of Response: October 15, 2013

Response submitted by: Steve Rakow

Title: Rates Analyst

Division/Unit: Division of Energy Resources

Telephone: 651-539-1833

Request No.	
1.	<p>Rakow Direct, p. 3. Department witness Rakow states that a Certificate of Need is not required and the bidding process is “being used to select proposals that could meet the need identified in Xcel’s last resource plan.”</p> <p>Is it the Department’s position that need has already been established in this matter and is not an issue to be address by the ALJ?</p> <p>If yes, provide the Department’s explanation of the PUC’s March 5, 2013 Order in which it said: “Finally, the Commission notes that it is approving Xcel’s plan for planning purposes only. This approval does not relieve Xcel from the need to comply with any regulatory review required for any specific resource it might pursue in implementing this plan.”</p> <p><b><u>DOC Response:</u></b></p> <p>Yes. As explained in Dr. Rakow’s Direct Testimony at page 3,</p> <p style="padding-left: 40px;">Minnesota Statutes § 216B.2422, subd. 5 (b) states in relevant part: “[I]f an electric power generating plant, as described in section 216B.2421, subdivision 2, clause (1), is selected in a bidding process approved or established by the Commission, a certificate of need proceeding under section 216B.243 is not required.</p> <p>Thus, while the Department agrees with the Minnesota Public Utilities Commission (Commission) that the Commission’s resource planning order in Docket No. E002/RP-10-825 does not relieve Xcel from the need to comply with any regulatory review required, a certificate of need is not a required regulatory review.</p>

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2.	<p>Does the Department believe Commission staff recommended to the Commission that need be evaluated in this contested case proceeding?</p> <p>If your answer is no, please explain your interpretation of the following paragraph from the February 20, 2013 staff briefing papers.</p> <p>“Therefore, staff believes it is appropriate that the RAP process be continued in the manner in which it was designed, a CN-like process for the need identified in the resource plan. Staff does not believe an explicit finding, as proposed by MCEA is necessary (that the Commission indicate in its Order that OAH resolve the issue of whether the projected need is justified, consistent with the Certificate of Need statute) however, if the Commission wishes to provide emphasis on this point to the ALJ, it would reasonable.”</p> <p><b><u>DOC Response:</u></b></p> <p>No. Commission staff states “a CN-like process for the need identified in the resource plan.” Thus, the proceeding is not a certificate of need. Rather, the phrase “CN-like process” is a description of the process so that those who wish to participate can have a model or outline ahead of time as to how the process will proceed. That is, parties should a process similar to this:</p> <ol style="list-style-type: none"> <li>1. a petition from Xcel,</li> <li>2. a completeness comment period,</li> <li>3. a determination from the Commission regarding completeness;</li> <li>4. a determination from the Commission regarding use of a contested case or a comment process, if a contested case: <ol style="list-style-type: none"> <li>a. a pre-hearing conference with to determine a schedule;</li> <li>b. filing of testimony;</li> <li>c. public hearings;</li> <li>d. evidentiary hearings;</li> <li>e. briefs;</li> <li>f. administrative law judge report;</li> </ol> </li> <li>5. and so on.</li> </ol>

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3.	<p>In its June 21, 2013 Order the Commission said: “But when Xcel seeks to offer its own proposal into the competitive resource acquisition process, this process tracks the framework of the Certificate of Need process under Minn. Stat. § 216B.243.” Is the Department’s position that all of the criteria and requirements stated in Minn. Stat. § 216B.243 need to be proved in this matter? If you answer is no, state specifically which provisions, including subdivision and sub-paragraph, do not need to be proved in this matter.</p> <p><b><u>DOC Response:</u></b>  The Department agrees with the Commission Order that the process at hand tracks the framework of, or is modeled upon, that of a certificate need. However, it is also clear that under Minnesota Statutes no provisions of Minnesota Statutes § 216B.243 apply to this proceeding. See Dr. Rakow’s Direct Testimony at page 3 for further details.</p>