

January 4, 2018

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

RE: **Supplemental Comments of the Minnesota Department of Commerce, Division of Energy Resources**  
Docket No. E002/M-17-694

Dear Mr. Wolf:

Attached are the supplemental comments of the Minnesota Department of Commerce, Division of Energy Resources (Department) regarding the petition of Northern States Power Company doing business as Xcel Energy (Xcel) filed on September 26, 2017 requesting authorization to acquire the 302.4-megawatt Dakota Range wind project. The Department filed comments regarding the petition on November 30, 2017 and Xcel filed reply comments on December 14, 2017.

The Department continues to recommend **denial without prejudice** and is available to respond to any questions the Minnesota Public Utilities Commission may have.

Sincerely,

/s/ STEPHEN COLLINS  
Rates Analyst

SC/lt  
Attachment



## Before the Minnesota Public Utilities Commission

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

Docket No. E002/M-17-694

#### I. INTRODUCTION

On September 26, 2017, Northern States Power Company doing business as Xcel Energy (Xcel or the Company) submitted a petition requesting approval to acquire a 302.4-megawatt (MW) South Dakota wind farm referred to as Dakota Range.

On November 30, 2017, the Minnesota Department of Commerce, Division of Energy Resources (Department) submitted comments recommending that the Minnesota Public Utilities Commission (Commission) deny Xcel's petition without prejudice because Xcel did not follow the modified Track 2 process (currently required for Xcel-proposed wind projects) or another sufficiently competitive and transparent process to select Dakota Range.

On December 14, 2017, Xcel filed reply comments agreeing that the Company did not follow the modified Track 2 process, but stating that the Commission should nevertheless approve Xcel's petition.

On December 19, 2017, the Commission issued a *Notice of Supplemental Comment Period* requesting supplemental comments on whether the Commission should approve Xcel's request to build, own, and operate Dakota Range, what action(s) the Commission should take if Xcel's request is not approved, and whether there are any other issues or concerns.

#### II. DEPARTMENT ANALYSIS

The Department continues to recommend that the Commission deny Xcel's petition without prejudice. While the Department agrees with Xcel that there are advantages to approving the Xcel's petition, the Department views the disadvantages as greater. For clarity, the Department presents the advantages and disadvantages in the table on the next page, which in part recaps the conclusions in the Department's initial comments. As can be seen, the primary advantage is the assurance of incremental benefits to ratepayers, but this benefit is outweighed by the long-term harm to the regulatory process (and thus ratepayers) that would occur by approving a project that was acquired in clear violation of a Commission Order and without a concurrent, transparent, and independently audited bidding process.

**Table 1: Advantages and Disadvantages of Approving Xcel’s Petition**

Advantages	Disadvantages
<ol style="list-style-type: none"> <li>1. Adding Dakota Range to Xcel’s system would benefit ratepayers. As concluded in the Department’s initial comments, adding at least 450 MW of generic wind (beyond the 1,550 MW approved in 2017) to Xcel’s system is beneficial. The assumed cost of generic wind in this conclusion is higher than the cost of Dakota Range.</li> <li>2. Xcel may not acquire a substitute project or projects if Dakota Range is denied, thus losing the incremental benefits of acquiring more wind. If Xcel does acquire a substitute project or projects, the project(s) may be more expensive or result in lower ratepayer benefits relative to Dakota Range.</li> </ol>	<ol style="list-style-type: none"> <li>1. Approving a resource acquisition when a utility has deviated from a process required by a Commission Order would send a message that Commission Orders must not necessarily be followed.</li> <li>2. There is no way to know with sufficient certainty and transparency that the project is best (particularly on a cost basis) due to the lack of a concurrent, transparent, and independently audited bidding process. Instead, the Commission must rely on educated guesses and Xcel’s judgment.</li> <li>3. Approving a resource acquisition when a utility has deviated from a process required by a Commission Order and not used a concurrent, transparent, and independently audited bidding process allows a utility to take further advantage of information asymmetries and thus bend the resource-acquisition process to benefit their shareholders instead of ratepayers. Approval increases the likelihood of this situation occurring in the future.</li> <li>4. Approval could reduce the confidence of potential suppliers in the objectivity, good faith, and predictability of the competitive processes used in Minnesota, thereby harming future resource acquisitions and putting at risk the ability of utilities to acquire least-cost resources.</li> <li>5. A substitute project or projects acquired through a new process could be just as good as or better than Dakota Range. Indeed, a substitute project could be simply an updated version of Dakota Range, as denial of the current petition does not preclude Xcel or Apex from re-proposing Dakota Range in a new bidding process. In addition, Xcel has communicated to the Department that the Company has secured the wind turbines needed to obtain the 2017 production tax credit (PTC) value for Dakota Range and could likely use those turbines to receive the 2017 PTC for a substitute project.</li> </ol>

Despite recommending denial, the Department acknowledges that the decision to approve or deny Dakota Range is not clear-cut. Rather, it is a value judgment between the advantages and disadvantages just described. To further inform the Commission's judgment, the paragraphs below provide the Department's response to Xcel's reply comments. The Department then provides its recommendations, in the case the Commission disagrees with the Department and concludes that Xcel's acquisition of Dakota Range is in the public interest, on what actions to take regarding the specific requests in Xcel's petition (including Xcel's request to build, own, and operate Dakota Range, as requested in the Commission's Notice). Lastly, the Department provides brief comments on courses of action available to the Commission should the Commission not approve Dakota Range.

*A. RESPONSE TO XCEL*

The information provided in Xcel's reply comments is helpful to clarify the process Xcel used to select Dakota Range. However, the key facts supporting the Department's recommendation above remain the same. The responses to the 2016 request for proposals (RFP) are still an inadequate benchmark and there is no way to know how a new set of proposals would have scored if Xcel had issued another RFP, which would be needed to create a valid benchmark and to comply with the required modified Track 2 process.

Xcel's reply comments assert that the Company did not have time to issue another RFP or that doing so would have jeopardized the level of benefits from the federal production tax credit. However, reviewing the timeline of the acquisition process in Docket No. E002/M-16-777 (16-777 proceeding) and assuming a similar timeline for Dakota Range, this assertion does not appear to be true. For the resources approved in the 16-777 proceeding, Xcel took 2.75 months from the start of RFP development (August 2, 2016) to submitting its self-build proposal (October 24, 2016). Therefore, if Xcel had started developing another RFP following the July 6, 2017 agenda meeting for the 16-777 proceeding in which the Commission indicated an openness to additional wind, it appears that Xcel could have still submitted its Dakota Range petition in late September 2017.

Xcel's reply comments also assert that its Dakota Range petition is similar to the Courtenay self-build wind farm petition that the Commission approved in Docket No. E002/M-15-401. The Department notes that the facts in that case were substantially different because the Courtenay wind farm was originally approved as a power purchase agreement acquired using a Commission-authorized process.

*B. ADDITIONAL ANALYSIS OF XCEL'S PETITION*

If the Commission disagrees with the Department and finds that Xcel's acquisition of Dakota Range is in the public interest, the Department recommends taking certain actions on the

specific requests in Xcel's petition, as well as certain actions on additional ratepayer protections and the purchase and sale agreement (PSA) that Xcel intends to use to acquire the pre-construction Dakota Range assets.

*1. Xcel's Request to Build, Own, and Operate Dakota Range*

If the Commission finds that adding Dakota Range to Xcel's system is in the public interest, the Department recommends that the Commission approve Xcel's request to build, own, and operate Dakota Range. While to the Department's knowledge there are no statutes requiring Xcel to gain the Commission's approval to build, own, and operate a wind project located outside of Minnesota such as Dakota Range, obtaining such approval is integral for Xcel to close on the PSA under the terms of the agreement and gives Xcel confidence that it will likely be able to recover the prudent jurisdictional costs of Dakota Range from ratepayers.

*2. Xcel's Proposed Aggregate, Symmetrical Cap on Initial Capital Costs*

If the Commission finds that Xcel's proposal to build, own, and operate Dakota Range is in the public interest, the Department recommends that the Commission approve the Company's request to set an aggregate, symmetrical cap on initial capital costs at Xcel's requested level (which Xcel specifies on page 12 of the nonpublic version of its petition), reduced for any costs allocated to other jurisdictions and updated to reflect any material changes in external factors such as tax rates and the cost of capital. The Commission approved the same type of cap, calculated using the same spreadsheet model, for the 1,550 MW wind acquisition in the 16-777 proceeding.

*3. Xcel's Proposed Capital Services Affiliate Agreement*

If the Commission finds that Xcel's proposal to build, own, and operate Dakota Range is in the public interest, the Department recommends that the Commission allow Xcel's Capital Services affiliate to supply Dakota Range's wind turbines using Xcel's proposed agreement. Xcel is planning to use the same agreement approved by the Commission for the 1,550 MW wind acquisition, with the same reporting requirements, and assets will be transferred at-cost.

*4. Xcel's Request for Confirmation that Dakota Range is a Reasonable and Prudent Way for Xcel to Continue to Meet Its Obligations under Minnesota's Renewable Energy Standard*

If the Commission finds that Xcel's proposal to build, own, and operate Dakota Range is in the public interest, the Department recommends that the Commission take no action on the Company's request for confirmation that Dakota Range is a reasonable and prudent way for Xcel to meet its renewable energy standard (RES) obligation. To the Department's knowledge, the Commission only needs to take action on this request if Xcel requests to recover Dakota

Range's costs through its RES Rider (established pursuant to Minn. Stat. § 216B.1645, subd. 2a, which requires such a confirmation). While the Commission could take action now, it would be better to wait. Waiting would ensure that the Commission's decision about reasonableness and prudence in relation to the RES relies on information that is as up-to-date as possible (given the uncertainty regarding how much of Dakota Range's output would be needed to satisfy the RES) and would not waste resources on an issue that will be irrelevant if the Commission does not approve the project.

#### *5. Additional Ratepayer Protections*

If the Commission finds that Xcel's proposal to build, own, and operate Dakota Range is in the public interest, then the Department recommends that the Commission also protect ratepayers from certain risks. Specifically, the Department recommends that the Commission condition any approval with the following ratepayer protections, which are nearly identical to those required for the 1,550 MW wind acquisition:

- (a) the Commission will hold Xcel accountable for the price and terms used to evaluate Dakota Range, for the purpose of cost recovery from Xcel ratepayers;
- (b) ratepayers will not be put at risk for any assumed benefits that do not materialize;
- (c) ratepayers must be sufficiently protected from risks associated with the nondeliverability of accredited capacity and/or energy from Dakota Range;
- (d) Xcel must report in its monthly fuel clause filings and annual automatic adjustment filings the amount of any curtailment payments, along with explanations for the curtailments, for Dakota Range;
- (e) Xcel must clearly account for all costs incurred for Dakota Range;
- (f) Xcel must file a compliance filing in January 2019 that provides an update on the status of Dakota Range, and must file, annually thereafter, a compliance filing that includes the actual delivered energy and actual accredited capacity; and
- (g) Xcel must report quarterly, until Dakota Range is in service, project failures along with the options available to the Commission to remedy any failures that occur.

In addition, given ongoing jurisdictional cost recovery issues, particularly in Docket No. E002/M-16-223, the Department also recommends that approval be conditioned on the Commission requiring Xcel to fully justify charging to Minnesota ratepayers any costs that Xcel is unable to recover in another jurisdiction, prior to charging Minnesotans for any such costs.

## 6. *Purchase and Sale Agreement*

Minnesota Statutes section 216B.50, subd. 1, provides that a public utility must get the Commission's approval to acquire more than \$100,000 in assets adding to the operating system the utility uses to serve its Minnesota customers, with the approval requiring a finding that the acquisition is in the public interest. Because Xcel would, through the PSA, acquire more than \$100,000 of assets adding to its operating system used to serve its Minnesota customers, Xcel must gain the Commission's approval to close on the PSA. For the PSA to be in the public interest, Xcel's proposal to build, own, and operate Dakota Range must be in the public interest and the terms of the PSA must reasonably protect ratepayers.

If the Commission finds that Xcel's proposal to build, own, and operate Dakota Range is in the public interest, the Department recommends that the Commission approve the PSA because its terms would indeed reasonably protect ratepayers (meaning the two public-interest criteria just described would be satisfied). Specifically, the PSA contains many contractual protections to ensure that Apex (the developer that is selling Dakota Range's pre-construction assets) holds up its end of the bargain. Moreover, if the Commission approves the PSA, it appears that Xcel and Apex will close on the transaction relatively soon thereafter, reducing the risk that changing circumstances jeopardize the transfer of assets.

The Department also recommends that the Commission grant Xcel a variance to Minn. Rules part 7825.1800, which requires that petitions for approval to transfer property under Minn. Statutes section 216B.50 contain certain information that Xcel's petition does not clearly provide, specifically certain information required by Minn. Rules part 7825.1800 items B and C. For Item B, Xcel does not clearly provide "all information as required in part 7825.1400, items A to J," which are filing requirements for a capital structure approval. However, as Xcel is not issuing any equity or debt under the PSA, the 7825.1400 capital-structure filing requirements are irrelevant. For Item C, Xcel does not clearly provide the required detailed descriptions of the cost methods use to assess the property.<sup>1</sup> However, the Department also views this information as irrelevant to determining whether the PSA is in the public interest.

To vary its rules, Minn. Rules part 7829.3200 requires that the Commission determine that: (i) enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule; (ii) granting the variance would not adversely affect the public interest; and (iii) granting the variance would not conflict with standards imposed by the law. Regarding the first requirement, enforcing Minn. Rules part 7825.1800 items B and C would impose an

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<sup>1</sup> The full item C requirements are as follows: "A description of the property involved in the transaction including any franchises, permits, or operative rights, and the original cost of such property, individually or by class, the depreciation and amortization reserves applicable to such property, individually or by class. If the original cost is unknown, an estimate shall be made of such cost. A detailed description of the method and all supporting documents used in such estimate shall be submitted."

excessive burden on Xcel because providing the information would require substantial additional work and is not necessary to making a public-interest finding. Regarding the second requirement, granting a variance to Minn. Rules part 7825.1800 items B and C would not adversely affect the public interest because, again, the information is not needed to determine whether the PSA is in the public interest. Finally, regarding the third requirement, granting a variance to Minn. Rules part 7825.1800 items B and C would not conflict with standards imposed by law because to the Department's knowledge the filing requirements are not required by or referred to in any laws.

*C. ACTIONS TO TAKE IF THE COMMISSION DOES NOT APPROVE DAKOTA RANGE*

If the Commission does not approve Xcel's request to build, own, and operate Dakota Range, the Commission need not take further action. However, given the ongoing uncertainty regarding the full completion of the 1,550 MW of wind projects approved in the 16-777 proceeding and the conclusion in the Department's initial comments that it is beneficial for Xcel to add at least 2,000 MW total of generic wind to its system (leaving an incremental need of at least 450 MW), the Commission may want to ensure that Xcel attempts to acquire more cost-effective wind. In that case, the Commission could require Xcel to initiate another wind acquisition process with efforts beginning as soon as reasonably possible.<sup>2</sup>

**III. DEPARTMENT RECOMMENDATION**

The Department continues to recommend denial without prejudice. The Department provides its reasoning above, along with other factors for the Commission to consider.

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<sup>2</sup> If the Commission required Xcel to initiate another wind acquisition process, the Commission would not need to issue any additional requirements regarding the specific process to be used. The Commission already established requirements to ensure the competitiveness of Xcel's wind acquisitions in the current timeframe, such as using the modified Track 2 process if Xcel intends to provide its own bid, in its *Order Approving Plan with Modifications and Establishing Requirements for Future Resource Plan Filings* issued January 11, 2017 in Docket No. E002/RP-15-21.



## **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  
Supplemental Comments**

**Docket No. E002/M-17-694**

**Dated this 4<sup>th</sup> day of January 2018**

**/s/Sharon Ferguson**

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