

Staff Briefing Papers

Meeting Date August 16, 2018 Agenda Item **10

Company Xcel Energy (Xcel or the Company)

Docket No. **E-002/M-17-712**

In the Matter of the Petition of Northern States Power Company for Approval of the 2017 Renewable Development Fund Annual Report, Tracker Account True-Up, and 2018 Rate Rider Factor

Issues Should the Commission approve the 2018 RDF tracker account and rate rider factor proposed by Xcel, or take some other action?

Should the Commission take any action under Minn. Stat. § 116C.779, as revised in 2017, respecting the transfer of funds to the Renewable Development Account (RDA)?

Should the Commission take any action on the Crown Hydro RDF grant contract (AH-01) under Minn. Stat. § 116C.779, or other authority?

Staff Susan Mackenzie susan.mackenzie@state.mn.us 651-201-2241

 **Relevant Documents**

Date

Relevant Documents (E-002/M-17-712)

Xcel's initial petition

September 29, 2017

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.



Relevant Documents

Date

PUC Notice seeking comments	October 30, 2017
Mississippi Park Connection (Parts 1-2)	November 17, 2017
Phyllis Kahn (Former State Representative)	November 21, 2017
Minneapolis Parks Foundation	November 21, 2017
Great River Coalition	November 21, 2017
Friends of the Riverfront	November 22, 2017
Metropolitan Council	November 22, 2017
Department of Commerce	November 22, 2017
Crown Hydro, LLC	November 22, 2017
Peter McLaughlin (Hennepin County Commissioner)	November 22, 2017
Friends of the Lock & Dam (FL&D)	November 22, 2017
Xcel Energy	November 22, 2017
St. Anthony Falls Alliance	November 22, 2017
Minneapolis Parks & Recreation Board	December 5, 2017
National Parks Conservation Association (Parts 1-2)	December 7, 2017
Friends of the Riverfront	December 15, 2017
Crown Hydro, LLC (Parts 1-3)	December 15, 2017
Senators Dzierdzic and Champion	December 15, 2017
Whitney Clark, Friends of the Mississippi River	December 15, 2017
City of Minneapolis	December 15, 2017
Friends of the Lock & Dam (FL&D)	December 15, 2017
Xcel Energy	December 15, 2017

Public Comments:

Jacob Frey (Council Member-City of Minneapolis)	November 7, 2017
St. Anthony Falls Heritage Board (Parts 1-2)	November 21, 2017
Park Watch	November 21, 2017
Tom Dimond	December 1, 2017

Relevant Documents (Docket E-002/M-12-1278)

Xcel RDF Quarterly Report (2 nd Quarter 2017)	July 27, 2017
Friends of the Lock & Dam (FL&D)	August 28, 2017

 **Relevant Documents**

Date

Xcel reply to FL&D

September 13, 2017

Xcel RDF Quarterly Report (4th Quarter 2017)

January 30, 2018

PUC Orders:

Order in E-002/M-00-1583

April 20, 2001

Order in E-002/M-05-109

June 28, 2005

Attachments:

2017 Legislation, Minn. Stat. 116C.779

2017 Legislation, Section 29

I. Statement of the issues

Should the Commission approve the 2018 RDF tracker account and rate rider factor proposed by Xcel, or take some other action?

Should the Commission take any action under Minn. Stat. § 116C.779, as revised in 2017, respecting the transfer of funds to the Renewable Development Account (RDA)?

Should the Commission take any action on the Crown Hydro RDF grant contract (AH-01) under Minn. Stat. § 116C.779, or other authority?

I. Introduction

There are three key issues in this docket. The first is whether to approve Xcel's proposed 2017 tracker account balance amount and 2018 RDF rate rider factor. Only the DOC commented on Xcel's calculations of the December 31, 2017 tracker balance and rate rider factor for 2018.

The second issue relates to the transfer of funds from Xcel's existing RDF account to the new renewable development account (RDA) established by the 2017 Legislation. Only the DOC commented on this issue.

The third issue is whether the Commission should terminate funding, take other action, or take no action on the Cycle One RDF Crown Hydro project, which was initially approved in 2003. The 2017 Legislation includes Section 29, which relates directly to the Crown Hydro project. In addition, in response to the Commission's notice seeking comments, parties have raised a number of other issues independent of the 2017 Legislation that question whether the Crown Hydro project is viable and if continued funding as an RDF project is in the public interest.

In addition to the three issues above, the Commission will need to decide how to move forward in establishing the process for the selection of projects to be funded through the new RDA established by the 2017 Legislation. Here, staff agrees with Xcel that the Commission should open a new docket and seek comments.

III. Background

Since 1994, the Renewable Development Fund (RDF) has served as a mechanism to support renewable electric energy through research, development and demonstration projects. It is financed by an obligation in which Xcel funds a renewable development account in return for storage of spent nuclear fuel casks at the Prairie Island and Monticello generating facilities. As of February 2017, Xcel reported that a cumulative total of \$326.95 million had been set aside for these purposes.¹

In 2017, the RDF statute (Minn. Stat. § 116C.779, subd. 1) was revised to replace the RDF administered by Xcel with a new account, the Renewable Development Account (RDA), to be

¹ Xcel Energy RDF Annual Report to the Minnesota State Legislature, in Docket No. E-002/M-12-1278, February 15, 2017, p. 2.

administered by the state Office of Management and Budget (MMB).² The new legislation provided for a process by which proposals for grant funding are evaluated by an advisory group working with independent experts. Resulting funding recommendations are presented to Xcel, which submits them to the legislature. The Commission may approve, disapprove or modify (if agreed to by Xcel) the proposed expenditures. The Commission submits its recommendations to the legislature, which may approve or disapprove (but may not modify) appropriations for a project recommended by the Commission. The statutory revision directed unencumbered funds in Xcel's existing RDF account to be transferred to the new RDA administered by MMB.

On July 27, 2017, in its 2017 Status and Progress Report (2nd Quarter), Xcel informed the Commission that it did not transfer any monies to MMB by July 1, 2017, under the new legislation. Xcel explained that there were no RDF funds to transfer that were not otherwise encumbered to pay grantees or legislative mandates.

On August 28, 2017, Friends of the Lock & Dam (FL&D) filed a letter requesting that the Commission consider the implications of Section 29 of the new legislation for the Crown Hydro RDF project, and on September 13, 2017, Xcel filed a reply to FL&D.³

On September 29, 2017, Xcel filed its annual petition requesting approval of the RDF report, tracker true-up, and new rate rider (Docket No. E-002/M-17-712). On October 30, 2017, the Commission responded to concerns expressed by FL&D by issuing a notice in the docket asking parties to comment on all of the following topics:

- Is the 2018 RDF rate rider factor proposed by Xcel reasonable, and based on appropriate assumptions, information, and supporting calculations?
- Has Xcel complied with Minnesota Laws 2017, Chapter 94, Article 10, Section 3 (116C.779), Subd. 1(b) with respect to the transfer of funds to the Renewable Development Account (RDA) on July 1, 2017? Is there any action the Commission should take?
- Should the Commission take any action on the Crown Hydro RDF grant contract (AH-01) under Minnesota Laws 2017, Chapter 94, Article 10, Section 29, or other authority?

These staff briefing papers are separated into two issues, with a summary of the parties' comments and staff discussion to follow:

- Issue One—2017 Legislation and RDF fund transfer
- Issue Two— Should the Commission terminate the Crown Hydro RDF grant contract (AH-01) or take some other action?

² See Minn. Stat. § 116C.779, subd. 1, as amended in the 2017 legislative session, attached to these briefing papers.

³ In Docket No. E-002/M-12-1278.

IV. Parties' comments on Issue One

2017 Legislation and RDF fund transfer

Xcel's petition

Xcel's proposal for the RDF fund transfer

On September 29, 2017, Xcel filed a petition seeking approval of an expense amount to be included in its RDF tracker and recovered from ratepayers.⁴ The Company also sought approval of a specific 2018 RDF rate rider factor for the recovery of approved tracker expenses.

Xcel noted that the increase in the 2018 rate rider factor was due to the increased activity in Cycle 4 RDF projects, as well as the new legislative mandate that requires funds to be transferred to the Minnesota Office of Management and Budget (MMB) on January 15 of each year. Since the 2017 Legislation requires the transfer of funds to MMB on January 15 of each year, Xcel proposed to include the transfer amount in its tracker account and recover it over the same year.⁵

In its initial petition, the Company provided a table showing the annual RDF rate riders from 2014 to 2018. During the next three years, the Company anticipates an increase in the rate rider factor as deferred grant payments are recovered on top of the transfer of funds to MMB. By 2020, the recovery amount should level out.

Table 1 (below) shows Xcel's proposal for total 2018 recoverable expenses to be included in its tracker account and recovered through the rate rider.

⁴ The RDF tracker account is the mechanism used for RDF expenses to be recovered from Minnesota ratepayers. Costs are charged to the account as they are incurred, and the revenue from the current RDF rate rider is reflected in the account as it is collected. Xcel indicated that it records the costs included in the tracker account in a manner consistent with the cost allocation methods approved by the Commission. Any over-recovery or under-recovery of 2018 actual costs will be identified in the RDF tracker account and reflected in the 2019 RDF rate adjustment.

⁵ The Commission should note that the tracker/rider does not result in full recovery of all RDF expenses for the Company in any given year. As with any tracker account and rate rider, Xcel may over or under recover RDF expenses in any given year depending on how quickly the new rider goes into effect and whether expenses are correctly forecasted. This will result in a true-up to the tracker account in the next year.

Updated Table 1: 2018 Recoverable Costs⁶

2018 RDF Rate Rider Recoverable Costs		
Legislative Mandates:		
Renewable Energy Production Incentives	\$619,819	
Minnesota Bonus Solar Rebate Program	\$2,246,317	
Solar Energy Incentive Program	\$2,215,979	
Minnesota Management and Budget Transfer	\$8,817,885	
Benson Legislative Payment	\$4,000,000	
Laurentian Legislative Payment	\$13,600,000	
Total Legislative Mandated Disbursements		\$31,500,000
Grant Disbursements		
Energy Production Grants	\$3,720,139	
Research and Development Grants	\$3,803,950	
Total Grant Disbursements		\$7,524,089
2017 True-up Expenses		\$393,687
Administration Costs		\$28,009
	Total 2018 Expenses	\$39,445,785

As noted in the table, Xcel is seeking recovery of four categories of expenditures, including:

- payments made to fulfill Minnesota legislative mandates
- payments made to RDF grant projects
- RDF administrative expenses
- true-up expenses for costs under-recovered by the rate rider factor in 2017

In its initial petition, Xcel provided background on the statutory annual RDF obligation, and the recovery procedures established by Commission Orders.⁷ Based on statute and Commission precedent, Xcel does not collect RDF costs from customers until certain cost recovery criteria are met. As noted, the Company recovers legislative mandates expected to be paid in the subsequent year, RDF grant project payments that meet certain known and measurable criteria, RDF administrative costs, and a true up of the previous years' expenses. The remainder of the obligated funds are tracked as deferred payments but are not collected from customers until recovery cost criteria are met.⁸

The 2017 Legislation [Minn. Stat. § 116C.779, subd. 1(b)] made numerous changes to the way in which the RDF is administered by replacing the RDF with a “renewable development account” (RDA) administered by the MMB. The 2017 Legislative changes had two separate provisions for

⁶ Table 1 represents Xcel’s updated position.

⁷ Xcel, September 29, 2017, pp. 6-8.

⁸ Xcel, September 29, 2017, pp. 6-7.

transferring money to the MMB—one for a transfer in 2017 (on July 1, 2017) and another for a transfer in 2018 (on January 15, 2018) and beyond.⁹

Xcel explained that the new legislation addressed a potential transfer in 2017 by requiring the Company to:

....transfer all funds in the renewable development account previously established under this subdivision and managed by the public utility to the renewable development account established in paragraph (a). Funds awarded to grantees in previous grant cycles that have not yet been expended and unencumbered funds required to be paid in calendar year 2017 under paragraphs (f) [City of Benson Initiative] and (g) [Laurentian Energy Authority Initiative] and sections 116C.7792 [Solar Energy Incentive Program] and 216C.41, are not subject to transfer.

In explaining its determination of the MMB transfer amount, Xcel maintained that because there were no “funds in the renewable development account” on July 1, 2017 that were unexpended or unencumbered, the Company did not transfer monies to the RDA on July 1, 2017 (i.e. make a payment to MMB on this date). At the time of the July 1, 2017 payment due date, all RDF funds were encumbered to pay grantees or legislative mandates. As part of its November 22, 2017 comments, the Company attached the July 27, 2017 RDF Quarterly Report for Second Quarter 2017, which more fully describes its rationale for not transferring any monies to MMB on July 1, 2017.¹⁰

In the 2017 Second Quarter Report, the Company explained that based on Minn. Stat. § 116.779, RDF funds are collected from ratepayers only when the expenses meet “known and measurable” criteria. These “known and measurable” criteria were approved by the Commission.¹¹ Practically speaking, this means that the Company has a liability, but there are no funds in the RDF account unless the Company has received approval to recover for known and measurable expenses. As the Company did not have any “funds in the renewable development account” that were not encumbered to pay grantees or legislative mandates, the Company did not transfer any monies to MMB on July 1, 2017. On June 22, 2017 the Company notified MMB via email that there were no funds to transfer by July 1, 2017.¹²

The 2017 Legislation also stated that no later than 30 days after the effective date of the legislation, the Company must notify each entity that has received a grant funded from the RDF to return any unspent RDF funds if certain conditions regarding site control and the start of construction have not been achieved. On June 30, 2017, Xcel sent notification letters to two of

⁹ Xcel, September 29, 2017, p. 7.

¹⁰ Attached to the Quarterly Report is the notification Xcel provided to MMB informing them that it would not be making a transfer to the RDA by July 1, 2017. Xcel also explained that it met with the DOC, PUC staff, legislative and fiscal analysts from the legislature and other entities to discuss and let them know that the Company did not plan to make any transfer of funds on July 1, 2017.

¹¹ Commission *Order*, in Docket No. E002/M-10-1054, March 17, 2011.

¹² Xcel attached a copy of the email to MMB with its Second Quarterly Report for 2017 (Attachment B).

the RDF grant recipients who received a grant funded before January 1, 2012.¹³ On June 30, 2017, notification letters were also sent to eighteen grant recipients that received a grant funded after January 1, 2012.

In addition, beginning January 15, 2018, and continuing each January 15 thereafter, the new legislation requires the Company to transfer to the RDA the annual obligation for the storage of dry casks located at the Prairie Island power plant and the Monticello nuclear power plant less the amount necessary to pay its obligations for legislative payments.¹⁴ The amount withheld in 2018 and subsequent years for legislative payments does not include the amount necessary for RDF grant disbursements since this obligation will be funded by the encumbered balance in the tracker and recovered from customers when the expenditures meet the known and measureable criteria.¹⁵

Xcel noted that the transfer payment to the RDA starting in 2018 will generate additional pressure to increase RDF costs for recovery. In prior years, recovered monies that are now part of a monetized transfer to the RDA were either carried forward as either encumbered funds or deferred grant payments.¹⁶

Xcel provided more detail on cost categories and the amounts requested for recovery in its initial petition.¹⁷ In addition to the legislatively mandated program amounts recovered in past years (e.g. REPI, Bonus Solar Rebate, Solar*Rewards, etc.), the Company included the payment to the Laurentian Energy Authority (\$13,600,000 in 2018), and the payment to the City of Benson (\$4,000,000 in 2018) in its 2018 tracker recovery amount.¹⁸ In 2017, the legislature also approved an appropriation of \$1,000,000 from the RDF account to the DEED 21st Central Mineral Fund that Xcel included for recovery in its 2018 tracker account.¹⁹

Given these actions, Xcel believes it has fully complied with Minnesota law and that there is no action required by the Commission relative to the MMB transfers required under the new legislation.

¹³ These were Crown Hydro (AH-01) and Coaltec USA, Inc. (RD3-77).

¹⁴ Xcel is proposing to recover an amount of \$8,817,885 through the tracker for a payment made to MMB in January 2018.

¹⁵ In 2018, Xcel's obligation for the storage of dry casks located at Prairie Island and Monticello is \$31,500,000. Subtracting the amount of the 2018 legislative mandates from the Company's total obligation results in the \$8,817,885 RDA payment to the MMB on January 15, 2018 pursuant to the 2017 legislative changes. See "Updated Table 1: 2018 Recoverable Costs." The DOC confirmed these numbers as part of its review of Xcel's tracker account (see DOC comments filed November 22, 2017).

¹⁶ Xcel, September 29, 2017, Figure 1, p. 8, demonstrates overall RDF cost recovery trends.

¹⁷ Xcel, September 29, 2017, pp. 9-14.

¹⁸ Xcel's request to terminate both the Laurentian Energy Authority PPA and the Benson Plant PPA were approved by the Commission in Docket Nos. 17-551 and 17-530, respectively.

¹⁹ Xcel, September 29, 2017, pp. 12-13.

RDF expenditures, tracker account, and cost recovery through the rider

In its petition, Xcel provided a discussion of the total RDF grant project expenses eligible for recovery in 2018 (\$7,524,089), including the standards for forecasted project recovery. It also described the RDF Administrative Expenses eligible for recovery (\$28,009) and the 2017 True-up expenses eligible for recovery (\$393,687).²⁰ The Company included discussion of costs that could be incurred in 2018 but were not eligible for recovery in the 2018 rate rider, noting that these costs would likely contribute to the Company's under-recovery of RDF expenses, and the need to true up any under-recovered costs in the 2019 RDF rate rider request.²¹

After adjusting for the 2017 under-recovery of \$393,687, the Company proposed to recover RDF expenditures of \$39,445,785 through a 2018 rate rider set at \$0.001318 per kWh.²² In accordance with the RDF rate rider tariff, the Company will collect these costs through an adjustment applied to customers' energy usage.²³

The Company's request for a rate rider factor of \$0.001318 per kWh will result in a charge of about \$0.99 per month for the average residential customer (an increase of about \$0.21 per month from the prior level).

In earlier Orders the Commission placed a cap on administrative expenses of no more than five percent of the RDF total annual allocation, and approved a proposal by the Company and supported by the DOC that clarified the application of the five percent administrative cap. In accordance with Commission Orders, the Company is required to provide an Actual and Forecasted Calculation of administrative costs and an Actual Only Calculation of such costs. Attachment 13 to Xcel's initial petition provides this information and demonstrates that Actual and Forecasted administrative costs as well as Actual Only Calculation of administrative costs are in compliance with Commission Orders addressing administrative expenses.

Fund liability and unencumbered balance

As part of its annual rider filing, Xcel is required to provide an updated version of a table showing RDF liabilities and obligations. The Company provided the following table documenting RDF program liabilities, payments, collections, and cumulative balance as of December 31, 2016:

²⁰ Xcel, September 29, 2017, pp. 13-14.

²¹ Xcel, September 29, 2017, pp. 15-16.

²² The 2018 rate rider factor was determined based on 12 months of recovery. Since the rider will not go into effect until the 4th Quarter of 2018, however, there will be under-recovery that will result in a true-up in the Company's 2019 rate rider filing.

²³ These numbers have been updated to reflect the Company's final position and recommendation that the Commission adopt DOC Option 2.

RDF Liabilities and Obligations²⁴

RDF Program Summary	
Category	Amount as of December 31, 2016
The total liability the Company has incurred under Minn. Stat. §116.799	\$301,350,000
The Company's aggregate payments for approved renewable development projects and legislative mandates	\$257,598,306
The total amount recovered through the fuel clause adjustment mechanism and RDF rate rider factor for RDF costs	\$12,202,440 (Fuel Clause) <u>\$248,704,482 (RDF Rate Rider)</u> \$260,906,922 (Total Recovered)
The unencumbered cumulative balance remaining in the fund	\$13,464,874

Solar Energy Standard (SES) exemption

Xcel explained that the Solar Energy Standard (SES)²⁵ provides an exemption from the costs of satisfying the solar standard to customers that operate iron mining extraction and processing facilities, a paper mill, wood products manufacturers, sawmills, or oriented strand board manufacturers. The RDF program provides funding for various solar programs and projects that are used by the Company to satisfy the solar standard. Consequently, customers who have requested SES cost exemption and been approved will be excluded from or credited these costs in the RDF rate adjustment. Currently, effective June 1, 2017, two customers have received approval for exemption from the SES costs in the RDF rider.²⁶

Xcel reply comments

In reply comments, Xcel noted that the DOC laid out four different approaches to calculating the appropriate amount of the 2018 RDF rate rider factor.²⁷ The difference between the DOC's four approaches (Options 1-4) relate to one of the legislative mandates—the estimated amount of the transfer to MMB. In deciding this issue, the Company believes the Commission will need to address two questions:

- What is the estimated amount of the 2018 transfer to MMB under Minn. Stat. § 116C.779 subdivision 1(e)?

²⁴ Xcel, September 29, 2017, p. 20.

²⁵ Minn. Stat. § 216B.1691, subd. 2f (d).

²⁶ The process for calculating and excluding the SES costs in the RDF rider for customers approved for SES cost exemption was established in Docket No. E-002/M-17-425.

²⁷ As noted, the RDF factor recovers four major elements of costs related to: Legislative Mandates, Grant Disbursements, 2017 True-up Expenses, and Administrative Costs.

- Should the Company include additional amounts (i.e., the forecasted December 31, 2017 unencumbered balance and grant funds encumbered for the Crown Hydro project) in the transfer to MMB?

Xcel provided the two tables below showing the derivation of the potential transfer amounts and the resulting RDF rate rider factors under each of the four options.

Derivation of 2018 transfer amounts

	Estimated Amount of 2018 transfer to MMB under Minn. Stat. § 116C.779(1)(e) (Column A)	Transfer to MMB the December 31, 2017 Unencumbered Balance ¹ (Column B)	Transfer to MMB the Amount Encumbered for Crown Hydro (Column C)	Forecast Transfer to MMB (Columns A+B+C)
Option 1	\$ 14,925,034	-	-	\$ 14,925,034
Option 2	\$ 8,817,885	-	-	\$ 8,817,885
Option 3	\$ 8,817,885	\$ 21,730,528	-	\$ 30,548,413
Option 4	\$ 8,817,885	\$ 21,730,528	\$ 3,551,409	\$ 34,109,822

¹ Includes forecast payments for November and December

Resulting 2018 RDF Factors under Options 1-4²⁸

	Forecast Transfer to MMB (Column A)	Other RDF Expenses included in 2018 RDF Factor (Column B)	Total 2018 RDF Expenses to be Recovered (Columns A+B)	Amount of 2018 RDF Factor (\$/kWh)
Option 1	\$ 14,925,034	\$30,627,900	\$45,552,934	\$ 0.001522
Option 2	\$ 8,817,885	\$30,627,900	\$39,445,785	\$ 0.001318
Option 3	\$ 30,548,413	\$30,627,900	\$61,176,313	\$ 0.002044
Option 4	\$ 34,109,822	\$30,627,900	\$64,737,722	\$ 0.002163

Xcel supported Option 2 above, noting that it believes that transferring to MMB the December 31, 2017 unencumbered RDF balance is not required by law and unnecessarily raises costs to the Company's customers. The Company observed that Option 4 demonstrates the financial impact of cancelling the Crown Hydro RDF project and transferring the unencumbered balance to MMB.

The Company agreed with the DOC that the 2018 transfer amount to MMB should be \$8,817,885, consistent with DOC Option 2 (instead of \$14,925,034 initially proposed by the Company).²⁹ In reply comments, Xcel provided the corrected 2018 MMB RDA transfer calculation:

²⁸ The Company confirmed the DOC's calculations of the 2018 RDF rate rider factors shown in this table.

²⁹ Xcel explained that, while Minn. Stat. § 116C.779 subdivision 1(e) does not explicitly list the statutory provision for the Old Solar*Rewards program (Minn. Stat. § 116C.7791), the Company believes it is

Corrected 2018 MMB transfer calculation³⁰

2018 RDF Obligation	+ \$31,500,000
Old Solar*Rewards (116C.7791)	- \$2,246,317
New Solar*Rewards (116C.7792)	- \$2,215,979
REPI (216C.41)	- \$619,819
FY 2018 City of Benson Payment (116C.779(1)(f))	- \$4,000,000
FY2018 and FY 2019 Laurentian Payment (116C.779(1)(g))	- \$13,600,000
2018 RDA Transfer to MMB	= \$8,817,885

The Company does not believe it should include additional amounts (either the December 31, 2017 unencumbered balance or encumbered grant funds for the Crown Hydro project if that project is terminated) in the transfer to the RDA. Therefore, the Company did not support transfer Options 3 and 4. As noted, the Company did not make a July 1, 2017 transfer to the RDA pursuant to Minn. Stat. § 116C.779 subdivision 1(b) because it interpreted the new legislation to indicate that there were no “funds in the renewable development account” that were unexpended or unencumbered.

Xcel explained this position by arguing that pursuant to Minn. Stat. § 216B.1645, “[t]he expenses *incurred* by the utility over the duration of the approved contract or useful life of the investment and expenditures made pursuant to the [RDF Statute] shall be recovered from the ratepayers of the utility, to the extent they are not offset by utility revenues attributable to the contracts, investments, or expenditure.” Pursuant to the Commission’s April 20, 2001 Order in Docket No. E002/M-00-1583, the annual RDF obligation is a liability that is deferred until the costs are actually incurred. Therefore, on July 1, 2017, the Company had only a deferred liability, but no actual “funds in the renewable development account” to transfer to the RDA. Xcel argued that the transfer of a liability is not authorized by the new legislation. It also indicated that it notified the MMB of the Company’s determination, and that the MMB did not object.³¹

Xcel noted that the statutory calculation of the amount to transfer to the RDA does not provide for a true-up mechanism for including any unencumbered cumulative balance or over-encumbered cumulative balance from the previous year. However, Xcel indicated that the DOC had correctly calculated a forecast of the unencumbered cumulative RDF balance as of

proper to withhold that amount from the estimate of the 2018 transfer to MMB and that to do so is consistent with the intent of the statute. See discussion of this issue in Xcel’s December 15, 2017 reply comments, pp. 3-4. The Company’s estimate of the 2018 RDF obligation for storage of dry casks located at Prairie Island and Monticello did not change, and in 2018 is \$31,500,000. DOC appears to support this interpretation of the statute.

³⁰ Xcel, December 15, 2017, p. 3.

³¹ Xcel, December 15, 2017, p. 4.

December 31, 2017 under Options 3 and 4. As noted, however, Xcel objected to including these amounts in the calculation of the 2018 RDF factor because a transfer of the unencumbered balance is not required by law and unnecessarily raises costs to customers.³²

Administrative expenses

The DOC asked the Company to explain in reply comments how administrative costs would be tracked, adjusted and recovered. In response, the Company recommended that the Commission open a separate docket (or notice and comment period) on how to address certain aspects of the 2017 Legislation, including the issue of administrative costs. The Company also provided the following discussion.

The current five percent administrative cost cap was first established by the Commission in its April 20, 2001 Order in Docket No. E002/M-00-1583. In 2012, the legislature amended the RDF Statute codifying into law many aspects of the RDF process that the Commission had established over time in its Orders, including a sentence about the recovery of administrative expenses.³³

Prior to the enactment of the 2017 Legislation, Minn. Stat § 116C.779 subdivision 1(e) read in pertinent part: “The commission may approve reasonable and necessary expenditures for administering the account in an amount not to exceed five percent of expenditures.” This sentence was struck in the 2017 Legislation, but Xcel noted that the administrative expenses related to the RDF program did not go away.³⁴ Since the Commission previously authorized the recovery of a limited amount of administrative expenses through Commission Order, the Company explained that RDF administrative expenses for existing RDF awards from Cycle 1 through Cycle 4 will continue to be tracked through the RDF tracker account and recovered through the RDF rider factor as currently established (meaning the 5% administrative cap will remain in effect). In the 2018 RDF factor, the Company included \$28,009 in administrative expenses. Currently there are twenty active RDF projects and four RDF contracts that are being negotiated, totaling \$26.0 million in obligated funds. Xcel noted that resources are still necessary to properly administer these existing obligations.³⁵

Xcel explained that on a going forward basis, much of the work that drove administrative expenses (namely, developing a request for proposal and hiring an independent evaluator) was transferred to the advisory group, as an excerpt from 2017 Legislation shows:

The advisory group must ~~be consulted with respect to the general~~

³² Xcel noted, however, that if the Commission determines that Minn. Stat. § 116C.779 subd. 1(b) does require a 2017 transfer to MMB of the unencumbered balance in the RDF account and the encumbered amount for Crown Hydro should that project be terminated, then under Minn. Stat. § 216B.1645 that expenditure would be recoverable from customers.

³³ Xcel, December 15, 2017, p. 5.

³⁴ Xcel, December 15, 2017, p. 5.

³⁵ Xcel, December 15, 2017, p. 6.

~~scope of expenditures in designing~~ design a request for proposal and ~~in evaluating~~ evaluate projects submitted in response to a request for proposals. ~~In addition to consulting with~~ The advisory group, ~~the public utility~~ must utilize an independent third-party expert to evaluate proposals submitted in response to a request for proposal, including all proposals made by the public utility.

Xcel explained that while it will continue to assist with the administration of the new RDA, the advisory group (or the Company on its behalf) will need funding to perform the work required under the 2017 Legislation. There are no RDA administrative costs included in the 2018 RDF factor calculation. Therefore, Xcel noted that the Commission does not need to make a decision on how administrative costs will be tracked and adjusted in this docket.³⁶

Request for a separate proceeding

The Company is interested in working with the Commission, DOC and other interested stakeholders to use lessons learned from administration of the RDF to develop the necessary RDA administrative process, procedures, and cost recovery.

As noted, the 2017 Legislation made a number of changes to the RDF that impact the 2018 rate rider and tracking of administrative costs, but also administration of the RDA, the composition of the RDA advisory group, and how projects will be awarded funding from the RDA into the future.³⁷

Xcel noted that the grant award process contemplated under the 2017 Legislation culminates with the Commission presenting “its recommended appropriations from the account to the senate and house of representatives committees with jurisdiction over energy policy and finance annually by February 15.”³⁸ Given the relatively recent passage of the 2017 Legislation and lack of detail in the statute, the Company was not able to provide recommendations on projects for funding to the Commission prior to February 2018. Xcel noted that there are a number of selection processes that need to be developed such as who is on the RDA advisory group, how administrative costs for the advisory group’s independent evaluator are paid, and whether the Company and advisory group should continue to use the procedural steps for funding cycles laid out in the Commission’s February 6, 2013 Order in Docket No. E002/M-12-1278.³⁹

For this reason, the Company sought guidance from the Commission on how to proceed with establishing the process and procedures for the selection of projects to be funded through the RDA, and requested that the Commission open a separate proceeding or notice and comment period on these issues.

³⁶ Xcel, December 15, 2017, p. 6.

³⁷ Xcel, December 15, 2017, p. 8.

³⁸ Minn. Stat. § 116C.779, subd. 1(n).

³⁹ Xcel, December 15, 2017, p. 8.

Department of Commerce (DOC)

The DOC's overall analysis was based on a review of Xcel's tracker report activity in 2016, 2017 and 2018, which is the most recent information provided by the Company regarding the Commission-approved RDF projects and the new legislative mandate that requires funds to be transferred to the MMB. The updated input data supporting Xcel's calculation of its proposed RDF factor covers the period of January 2016-August 2017 (actual data) and the period of September 2017-December 2018 (forecasted data). To facilitate the review of the Company's annual tracker report activity, the DOC maintains a separate RDF tracker model and updates the information each year with the new input data provided by the Company.⁴⁰

The DOC explained that Xcel's RDF rate rider adjustment factor (RDF factor) is currently set at \$0.001034 per kWh, and is recovered through the Resource Adjustment charge, a line item on customers' bills. The level of the RDF factor is adjusted once a year to a level allowing recovery of both actual costs (using a true-up procedure) and forecasted RDF costs for known and measurable amounts. This recovery is limited to the payments to RDF projects and legislative mandates for actual or known and measurable amounts. Recovery does not extend to all RDF obligation amounts (\$500,000 per cask per year), nor to the amounts awarded to projects that have not met required milestones. This structure has been important both to ensure that ratepayers pay only for actual or known and measurable RDF costs and to hold Xcel and project owners financially accountable.⁴¹

In regard to the issue of the 2017 Legislation and the MMB transfer amount, the DOC concluded that it is unclear whether Xcel's argument that there were no funds in the renewable develop account that were unexpended or unencumbered is consistent with the requirement in Minn. Stat. § 116C.779, subd. 1(b) to transfer monies to the RDA on July 1, 2017. To develop a more complete record for the Commission, the DOC provided four MMB transfer options (Options 1-4) and suggested that parties provide legal analysis of each.

The DOC provided background on the established procedure for RDF cost recovery pursuant to statute and Commission Order.⁴² It confirmed the legislative mandates that the Company proposed to include in the tracker account for recovery in 2018. Given that these are legislatively mandated payments, the DOC supported Xcel's proposal to treat them as known and measurable costs for recovery in 2016, 2017 and 2018.⁴³

2017 RDF Legislation (Minn. Stat. § 116C.779)

⁴⁰ DOC, November 22, 2017, pp. 5-6.

⁴¹ DOC, November 22, 2017, p. 5.

⁴² DOC, November 22, 2017, pp. 6-10.

⁴³ DOC provided Tables 1.1 and 1.2 that show the actual and forecasted RDF payments for the legislatively mandated programs. See DOC, November 22, 2017, p. 8.

The DOC identified two potential issues with Xcel's compliance with the 2017 Legislation. First, it noted that Minn. Stat. § 116C.779, subd. 1(b) requires that on July 1, 2017 Xcel transfer all funds in the renewable development account to the RDA administered by MMB, however, Xcel transferred no funds on that date. In addition, the DOC believes it is unclear whether some or all of the unencumbered cumulative RDF tracker balance as of December 31, 2017 should be included in the annual amount to be transferred to the RDA.

The DOC believes that there is some ambiguity in the practical application of the 2017 Legislation. The DOC commented that, although Xcel provided a specific justification for not transferring any funds to the RDA on July 1, 2017, Xcel's interpretation may not be correct. Thus, it outlined four ways to calculate the MMB transfer amount (Options 1-4), and calculated the 2018 rate rider factor associated with each, in order to assist the Commission in its determination of this matter.

The DOC noted ambiguities in Xcel's initial calculation of the January 15, 2018 MMB transfer amount and therefore provided Option 2 with corrected numbers.⁴⁴ Options 3 and 4, assume that the December 31, 2017 "unencumbered cumulative" RDF balance should be part of the monies transferred to MMB.

The DOC explained that despite "unencumbered cumulative" RDF balances of about \$13.5 million (based on actual data) as of December 31, 2016, and \$21.7 million (based on forecasted data) as of December 31, 2017, Xcel transferred only \$8,817,885 to MMB on January 15, 2018. DOC stated that, "it is not clear whether some or all of the unencumbered cumulative RDF tracker balance as of December 31 should be included in the annual amount transferred to the RDA."⁴⁵

As noted, Option 1 may not be relevant because Xcel accepted the DOC's updated numbers.⁴⁶ And the cask obligation is the same (\$31,500,000) under Options 2, 3 and 4.

Under Option 2, the 2018 RDF rate rider factor would be set at \$0.001318 per kWh. This option assumes no transfer of the unencumbered cumulative RDF balance amount as of December 31, 2017. (Option 2 is Xcel's preferred option).

Under Option 3, the 2018 RDF rate rider factor would be set at \$0.002044 per kWh. Under this option, the DOC estimated that the transfer amount of the unencumbered cumulative RDF balance as of December 31, 2017 to the RDA (and the payment to MMB) on January 15, 2018

⁴⁴ As noted, these ambiguities were addressed by Xcel in reply comments. Xcel clarified that the amount of the annual obligation for the Prairie Island and Monticello nuclear plant dry cask storage is \$31,500,000, and that the correct MMB transfer amount is \$8,817,885—the amount Xcel transferred to MMB on January 15, 2018. As a result, the Department's Option 1 is arguably irrelevant at this point.

⁴⁵ DOC, November 22, 2017, p. 11.

⁴⁶ Under Option 1, the 2018 RDF rate rider factor would be set at \$0.001522 per kWh. This option assumes no transfer of the unencumbered cumulative RDF balance as of December 31, 2017 to MMB.

should be \$30,548,413.⁴⁷ Option 3 assumes that the Commission will take no action to terminate the Crown Hydro grant contract as part of this docket.

Under Option 4, the 2018 RDF rate rider factor would be set at \$0.002163 per kWh. Option 4 is a variant Option 3, assuming that in addition to ordering the \$30,548,413 transfer to MMB under Option 3, the Commission terminates the Crown Hydro grant contract and the monies associated with the project grant become part of the unencumbered RDF balance to be transferred to MMB. Under this option, the DOC estimated that the transfer amount of the December 31, 2017 unencumbered cumulative tracker balance would be \$34,109,822.⁴⁸

Tracking and adjusting for RDF administrative costs going forward

In addition to the MMB transfer amounts under the four options above, the DOC raised the issue of how, under Options 3 and 4, administrative costs incurred by Xcel after August 2017 would be tracked and recovered. The DOC noted that administrative costs estimated for 2018 and after are not included in the calculation of the 2017 unencumbered cumulative RDF balance, nor is the true-up for the difference between September 2017 and December 2018 anticipated or addressed. Therefore, the DOC asked Xcel to address these issues as part of its reply comments.⁴⁹

Regarding the Administrative Cost Cap established by Commission Orders, the DOC concluded that Xcel's RDF administrative costs are below the Commission-required five-percent cap on administrative costs.⁵⁰

DOC confirmation of Xcel's calculations

The DOC confirmed that Xcel's calculations of actual (January-August 2017) and forecasted (September-December 2018) numbers were correct and generally reasonable.⁵¹ Based on

⁴⁷ In reply comments, Xcel confirmed the DOC's calculation of Option 3, including the unencumbered cumulative RDF balance as of December 31, 2017 and the 2018 rate rider factor.

⁴⁸ In reply comments, Xcel confirmed the DOC's calculation of Option 4, including the unencumbered cumulative RDF balance as of December 31, 2017 and the 2018 rate rider factor.

⁴⁹ The DOC described the types of administrative duties needed for grant contracts and other awards from the RDF in its November 22, 2017 comments, pages 15-17. The DOC recommended approval of the Company's proposal to include RDF base-level administrative expenses of \$30,300 as known and measurable RDF administrative costs in the 2018 rate rider recovery. These base-level administrative expenses cover an RDF grant administrator, RDF advisory group miscellaneous meeting expenses, and Clean Energy States Alliance membership dues.

⁵⁰ The DOC provided a description of how the Administrative Cost Cap is to be applied on pages 17-18 of its November 22, 2017 comments, including a detailed procedural history of the Commission's Orders addressing the establishment and application of an administrative cost cap for the RDF program. The DOC's calculations demonstrate that Xcel's RDF administrative costs are below the Commission-required five-percent cap on administrative costs (both actual and forecasted).

⁵¹ DOC, November 22, 2017, pp. 18-20, and Attachments 8-10.

these calculations, the DOC determined the 2018 RDF rate rider factor for each of the four MMB transfer options, and included the information in the table below:

	2018 Transfer to MMB	RDF Factor (\$/kWh)
Option 1	\$ 14,925,034	0.001522
Option 2	\$ 8,817,885	0.001318
Option 3	\$ 30,548,413	0.002044
Option 4	\$ 34,109,822	0.002163

As noted, in reply comments, Xcel confirmed DOC's calculation of each of the four rate rider factors above.

Administrative cost allocator

The DOC observed that Xcel revised the administrative cost allocator to allocate administrative costs based on the ratio of grant awards by project type to the total Cycle 4 grant awards. The DOC concluded that Xcel's proposal is reasonable since the Company is operating under the fourth RDF cycle.⁵²

Compliance filings

The DOC concluded that Xcel complied with the Commission reporting requirements from past Orders, including reporting requirements from the Commission's June 28, 2005 Order in Docket No. E-002/M-05-109, and the March 17, 2011 Order in Docket No. E-002/M-10-1054.⁵³

V. Staff Discussion on Issue One

2017 Legislation and RDF fund transfer

Parties do not dispute the DOC's calculation of the transfer amounts or the rate rider factors associated with each of the four transfer options. Staff notes that the 2018 rate factor will be in effect for only three months in 2018 (assuming the Commission approves a factor and it goes into effect by October 1, 2018). This lag will contribute to Xcel's under-collection in 2018 and need for future true-up through the rider. The new rate rider factor approved by the Commission in this docket will be effective beginning October 1, 2018 until a new factor is implemented at some point in 2019.

Xcel recommended the Commission adopt Option 2, which does not include liabilities associated with past unspent and unobligated RDF liabilities, arguing that on July 1, 2017, there were no funds in the renewable development account to transfer to MMB, only a liability on the Company's books representing the 2017 unencumbered balance. As noted, this is due to

⁵² DOC, November 22, 2017, p. 20.

⁵³ DOC, November 22, 2017, pp. 21-22.

the fact that the RDF fund, as set up by Commission, allows the Company to record its liability under Minn. Stat. § 116C.779 by January 1 of each year, then use deferred accounting in the treatment of its cask obligation under statute.⁵⁴ As a result, Xcel believes it has no authority to do anything with the December 31, 2017 unencumbered balance amount until it receives direction from the legislature or the Commission. Accordingly, Xcel proposed to retain the unencumbered balance as a liability on its books until it receives this direction.

The DOC concluded that the 2017 Legislation was ambiguous, and instead of making a specific recommendation, it calculated tracker balances and rate rider factors for four potential MMB transfer options.⁵⁵ It therefore did not support a specific interpretation of Minn. Stat. § 116C.779, subd. 1(b). It stated only that “there is some ambiguity as to the practical application of the new legislation.”⁵⁶ The DOC appeared to indicate that the Commission could adopt Options 2, 3 or 4, depending on its interpretation of the statute. The DOC also proposed that the Commission seek legal analysis from parties on the interpretation of the legislation in order to decide whether to require Xcel to transfer the 2017 unencumbered balance to the MMB-administered RDA.

The relevant statutory language regarding the transfer of RDF funds to MMB is set forth in subdivision 1(b) of Section 116C.779:

b) On July 1, 2017, the public utility that owns the Prairie Island nuclear generating plant must transfer all funds in the renewable development account previously established under this subdivision and managed by the public utility to the renewable development account established in paragraph (a). Funds awarded to grantees in previous grant cycles that have not yet been expended and unencumbered funds required to be paid in calendar year 2017 under paragraphs (f) and (g), and sections 116C.7792 and 216C.41, are not subject to transfer under this paragraph. (Emphasis added).

The regulatory accounting treatment set up by the Commission includes Xcel carrying a liability for the amount of awarded but as yet unpaid grants, and for amounts related to the per cask obligations set out in the statute but not yet obligated. And, the Commission allowed Xcel to collect monies from ratepayers only after funds are dispersed to grantees and for legislatively mandated programs (or are going to be expended in the year for which the rider factor is applied). Xcel argued the unencumbered cumulative fund balance is not actual money that could have been transferred to MMB on July 1, rather it is an accounting entry that would have to have been “monetized” by Xcel collecting from ratepayers an estimated \$17.6 million to cover the unencumbered cumulative balance of the RDF account as of July 1, 2017.⁵⁷

⁵⁴ See *Order Adopting Proposal for Oversight and Operation of Renewable Development Fund*, in E-002/M-00-1583, April 20, 2001.

⁵⁵ As noted, Option 1 may be irrelevant given Xcel’s acceptance of the DOC updates.

⁵⁶ DOC, November 22, 2017, p. 13.

⁵⁷ Xcel’s calculations show the unencumbered balance in the RDF account was \$13.5 million as of December 31, 2016, and \$21.7 million as of Dec. 31, 2017, a difference of \$8.2 million. Assuming half of that difference was collected by July 1, 2017, the unencumbered cumulative balance as of that date

One reading of the statute indicates that the legislature contemplated that there may be actual dollars in the RDF that are not dedicated to the payment of grants and legislative mandates that should be transferred to the MMB RDA for disposition by the legislature. Another possibility is that the legislature was only requiring active monies in the account to be transferred, not deferred liabilities.

Like the DOC, staff believes that the 2017 Legislation needs clarification and that there could be interpretations other than the one provided by Xcel or the interpretation discussed above. If, for example, the legislature did not fully understand the regulatory accounting treatment set up by the Commission for the RDF, it may not have appreciated Xcel's argument that there are no actual "funds" to transfer in the current account.⁵⁸ A possible option for the Commission would be to require Xcel to transfer the full 2017 unencumbered balance amount to the RDA (DOC Option 3 or 4), recognizing that the liability on the Company's books is the result of the regulatory accounting mechanism set up by the Commission. This Commission action would reflect an understanding of legislative intent requiring Xcel to transfer all RDF funds, including unfunded liabilities, to the RDA.⁵⁹

However, as noted, Xcel concluded that the 2017 Legislation does not provide clear direction concerning the December 31, 2017 unencumbered tracker balance amount, nor the terms under which or even whether the Commission is authorized to direct a transfer of these funds to the RDA. An important consideration noted by the Company is that if the entire 2017 unencumbered balance is transferred to the RDA to be administered by MMB, including all existing liabilities (as well as including Crown Hydro grant funds if this RDF project were to be terminated), the required additional recovery from ratepayers in a single year might run in excess of \$20 million.

In light of the uncertainty surrounding the interpretation of the 2017 Legislation, however, the Commission may wish to seek clarification of the legislature's intent before ordering any particular disposition of the RDF's unencumbered fund balance. Apart from the issue of whether the new legislation allows for the transfer of the 2017 unencumbered balance recorded as a liability on Xcel's books, there is no explanation in the 2017 Legislation concerning how either transfers or true-ups for over- or under-encumbered project funding or for forecast error should be treated.⁶⁰ Another uncertainty left unexplained by the legislation is

would have been \$17.6 million (\$13.5 million + \$4.1 million).

⁵⁸ Xcel noted, and staff agrees, that if the Commission does decide to require a 2017 transfer to the RDA, the unencumbered balance and encumbered amount for Crown Hydro (if the Commission determines there should be no future payments to Crown Hydro) should be transferred to MMB. In that case, under Minn. Stat. § 216B.1645 that expenditure would be recoverable from customers.

⁵⁹ Staff notes both Options 3 and 4 assume a transfer of the December 31, 2017 unencumbered funds to the RDA. Option 3, however, assumes the Commission takes no action to terminate the Crown Hydro grant, and therefore, there are no unencumbered monies associated with the Crown Hydro project included as part of the transfer. Option 4 demonstrates the financial impact of cancelling the Crown Hydro RDF project and transferring the unencumbered balance to the RDA.

⁶⁰ Specifically, the DOC noted that administrative costs estimated for 2018 and after are not included in the calculation of the December 31, 2017 unencumbered cumulative RDF balance, nor is the true-up for

how expenses associated with administrative costs are to be met. Staff notes that the DOC asked parties to provide legal analysis of the four MMB transfer options as part of reply comments, but none did so, and staff notes again that the DOC did not provide a recommendation or suggest a clear order of preference for its four options.

The Commission could decide that the need for additional clarity over legislative intent is important enough to delay ordering a particular disposition of the unencumbered fund liability at this time. As it seeks further direction, it could take no action to require a transfer of the unencumbered fund balance. Instead, it could approve Xcel's 2017 tracker activity and rate rider and direct Xcel to leave the 2017 year-end unencumbered balance in the RDF tracker as a liability until directed otherwise by the Commission or through clarification of the statute by the legislature.⁶¹ If no further direction is forthcoming, the Commission could seek further comment and legal analysis from outside parties and stakeholders on how to address the unencumbered liabilities inherited from the previous RDF.

In sum, there appear to be two other actions the Commission could take depending on its interpretation of the 2017 Legislation. In addition to taking no immediate action to require Xcel to monetize and transfer to the RDA the 2017 year-end unencumbered balance, and directing Xcel to maintain the balance in the tracker account until further notice, the Commission could: (1) decide not to require Xcel to transfer the 2017 year-end unencumbered balance to the RDA but require the Company to remove it from its books and tracker account, or (2) decide to require Xcel to monetize the unencumbered fund balance in its RDF account as of the 2017 year-end and transfer the funds to the MMB for deposit in the RDA.

Separate proceeding on the implementation of 2017 Legislation

As noted, the 2017 Legislation made a number of changes to the renewable development fund program, which will affect the tracking of administrative costs, the administration of the RDA, the composition of the RDA advisory group, and how projects will be awarded funding from the RDA into the future.⁶² Decisions will need to be made regarding how members of the RDA advisory group are selected, how administrative costs for the advisory group's independent evaluator are paid, and whether the Company and advisory group should continue to use the procedural steps for funding cycles laid out in the Commission's February 6, 2013 Order in Docket No. E002/M-12-1278.⁶³

As noted, the Company is seeking guidance on these issues and has requested that the Commission open a separate proceeding.⁶⁴ Staff supports this approach. Therefore, the

the difference between September 2017 and December 2018 anticipated or addressed.

⁶¹ In this case, the Commission would implicitly be using its authority over the unencumbered balance of RDF funds that were part of the tracker account prior to passage of the 2017 Legislation.

⁶² Xcel, December 15, 2017, p. 8.

⁶³ Xcel, December 15, 2017, p. 8.

⁶⁴ The DOC did not file reply comments but staff assumes it supports the Company's proposal to open a

Commission may wish to direct staff to open a new docket and issue a notice seeking comments on the additional issues raised by Xcel and the DOC related to the application of the 2017 Legislation, including but not limited to administrative costs, RDA administrative process and procedures, and cost recovery.

The Commission should note that the grant award process under the 2017 Legislation results in the Commission presenting “its recommended appropriations from the account to the senate and house of representatives committees with jurisdiction over energy policy and finance annually by February 15.”⁶⁵ Given the relatively recent passage of the 2017 Legislation and lack of detail in the statute, the Company indicated that it was not able to provide recommendations on projects for funding to the Commission prior to February 2018. It noted that there are a number of selection processes that need to be developed first.⁶⁶

VI. Parties’ Comments on Issue Two

Should the Commission terminate the Crown Hydro RDF grant contract (AH-01) or take some other action?

Central Riverfront Stakeholders

Numerous parties filed comments opposing the Crown Hydro project and seeking termination of the project’s RDF grant contract (AH-01). They raise issues regarding many parts of the plan for a hydroelectric facility at St. Anthony Falls. These parties opposed the project and argued for alternative uses for and redevelopment of the riverfront.⁶⁷ They include private entities, public agencies, non-profits, office holders, community groups and government agencies. Some examples include: property owners located on the riverfront, the Minneapolis Park and Recreation Board (MPRB), the St. Anthony Falls Heritage Board, and Friends of the Lock and Dam (FL&D). The arguments made by the Central Riverfront Stakeholders can be grouped into several subject areas.

First, the proposed site for the Crown Hydro project in the vicinity of the St. Anthony Falls is still not a settled matter because it is still under negotiation with US Army Corps of Engineers (the Corps). Numerous commenters raised questions about whether the Crown Hydro project fits well into the changed pattern of economic and cultural development that has occurred in the

new docket and seek comments related to process and procedures under the new 2017 Legislation.

⁶⁵ Minn. Stat. section 116C.779, subd. 1 (n).

⁶⁶ Xcel, December 15, 2017, p. 8.

⁶⁷ Staff refers to these commenting parties as the “Central Riverfront Stakeholders.” The group includes: Friends of the Lock & Dam (FL&D), the City of Minneapolis, Friends of the Mississippi River, Friends of the Riverfront, National Parks Conservation Association, Minneapolis Parks and Recreation Board, St. Anthony Falls Alliance, Metropolitan Council, Great River Coalition (attaching a letter from Walter Mondale), Park Watch, St. Anthony Falls Heritage Board, Minneapolis Parks Foundation, Mississippi Parks Connection, Jacob Frey—Mayor of Minneapolis, Former State Representative Phyllis Kahn, Hennepin County Commissioner Peter McLaughlin, Tom Dimond, and Minnesota State Senators Dzedzic and Champion.

Central Riverfront in the 16 years since the RDF grant was initially awarded. Various community groups and public agencies noted that they have worked together to develop plans for further redevelopment of the Riverfront and expressed skepticism over whether the Crown Hydro project is consistent with these plans. Second, some critics raised environmental and ecological concerns over the water levels resulting from the project, and the missed recreational and visual opportunities that might result. Third, an overriding concern with respect to the lack of a secure and agreed upon site is the resulting uncertainty over project milestones, and when and whether they can be met. Fourth, some parties raised issues related to the financial viability of the project and whether given the passage of time, the project represented appropriate renewable technology for the use of ratepayer funds.

Riverfront site development

The St. Anthony Falls Central Riverfront has changed appreciably since Crown Hydro first proposed and received grant funding from the RDF program in 2002. Changes include new museums, theaters, offices, hotels and condominiums. In addition, a number of governmental and non-governmental bodies have developed and begun to implement plans for further redevelopment for educational, recreation and entertainment purposes. Many of these groups now object to the Crown Hydro project and believe it may interfere with or harm these plans. They oppose the continuation and further funding of the project.

Brief history of the Crown Hydro project proposal and changing site plans

The Minneapolis Park and Recreation Board (MPRB) commented that it had been involved with the project from the beginning. The MPRB owns and operates the public parks in Minneapolis, including the area surrounding the proposed project. As early as 1991, Crown Hydro proposed to locate the project in the 19th century Crown Roller Mill building, but could not reach an agreement with its owners. It then proposed to move the project to land owned by the MPRB, but was not able to provide the board with assurances with respect to a number of concerns, and no lease was granted. The concerns of the MPRB included:

- water flow and aesthetics of St. Anthony Falls
- potential impact of discharge channel on riverbed
- property access during construction
- easement rights
- cultural resources
- safety and security
- geological stability of the Stone Arch Bridge, Mill Ruins Park and other historical areas
- protecting public and private investments in the area
- financial liability
- potential impact on residential, recreational and commercial users⁶⁸

⁶⁸ Minneapolis Park and Recreation Board (MPRB), December 5, 2017, pp. 1-2.

Further changes to the proposed site occurred in 2012 when Crown Hydro proposed relocating the facility to land owned by Corps. Crown Hydro is still negotiating with the Corps, which is reviewing its own policies and plans for the St. Anthony Falls area. Crown Hydro is also in discussions with FERC, which in June, 2012 issued to Crown Hydro a “Proceeding to Terminate License by Implied Surrender.” As of July, 2018, FERC has not, however, terminated the Crown Hydro project license. In April of 2015 Crown Hydro applied to the Corps for a license amendment which moves the project 250 feet north, adjacent to the lock and dam parking lot. Crown Hydro’s latest proposal, according to the MPRB, would construct a new, 900-foot tailrace rather than use old existing tunnels. The new tailrace would be under the Stone Arch Bridge on land owned by the Corps, but on which MPRB has non-exclusive easements. The proposed new site is inside Mill Ruins Park, part of the Central Mississippi Riverfront Regional Park, which receives 2.1 million user visits annually.⁶⁹

Changes since 2002

As noted by the Central Riverfront Stakeholders, in the 16 years since Crown Hydro received approval for RDF grant funding (in 2002), much has changed in the area of the proposed project. In 2001, a year prior to the grant, the Mill Ruins Park opened, encompassing the Mill City Museum, which opened in 2003. The museum is connected with the Stone Arch Bridge, which became a pedestrian walk and bike trail in 1994. Next to the museum is the Guthrie Theater, which opened in 2006, and now sits next to Gold Medal Park, containing a memorial to the victims of the 2007 I-35W bridge collapse. As part of the Mill City complex, new offices now house a variety of businesses and groups including the McKnight Foundation. Across from the Guthrie are the new offices of the Fairview-University Health Mill City Clinic and the American Academy of Neurology. Changes have also come recently to the Upper Lock at St. Anthony Falls, which was closed in June, 2015 to protect the Mississippi River upstream from invasive Asian carp.

The comments of the National Parks Conservation Association (NPCA) noted that in partnership with the Corps, it was now managing the lock with the National Park Service (NPS) as a visitor site. In September, 2017, NPCA released a visioning study, “Transforming the Lock,” describing the area’s role as a visitor destination.⁷⁰

Planning for the future uses of the Riverfront

Many commenting parties discussed the active planning efforts already conducted and underway to redesign and repurpose the riverfront. In initial and reply comments, the Friends of the Lock and Dam (FL&D) identified itself as a community group organized to promote redevelopment planning through “The Falls”, a project centered on Portland Avenue, the Corp’s Upper Lock, and the St. Anthony Falls Dam.⁷¹

⁶⁹ MPRB, December 15, 2017, p. 3.

⁷⁰ National Parks Conservation Association (NPCA), December 7, 2017, Attachment A, “Transforming the Lock: A Vision for a National Park Visitor Experience.”

⁷¹ FL&D, November 22, 2017, Appendix A: “The Falls: St Anthony Falls Lock and Dam Park and Visitor

“The Falls” consists of eight major components:

- the St. Anthony Falls Visitors’ Center
- new connections to the Stone Arch Bridge
- an interpretive center with educational programs and exhibits
- an event center supporting programs and maintenance
- a visitors food venue
- a canoe and kayak portage
- accommodation for water transportation
- a one-acre park and community space on the roof of the facility for civic events

In addition to “The Falls,” plans are underway for “Water Works,” a \$30 million joint undertaking by the Parks Foundation and MPRB. The project entails a pavilion embedded in the Mill remnants surrounded by a five-acre park, which is scheduled to open in 2019.⁷² The Parks Foundation supported the FL&D request for Commission reconsideration of the Crown Hydro RDF grant, noting that public funding for the Central Riverfront by the Minnesota DNR, NPS, and MPRB has totaled \$253 million and generated \$1.426 billion in private investment. “Water Works” is a part of this larger effort.

Another initiative, discussed in comments filed by former state representative Phyllis Kahn, is the Whitewater Trail Project.⁷³ The project resulted from legislation authored by Representative Kahn for a trail “primarily developed for whitewater rafters, canoers and kayakers.”⁷⁴ Originally sited on the East side of the river to avoid barge traffic, the closure of the Upper St. Anthony lock will allow this project to be moved to the West side. However, as former Representative Kahn’s letter emphasized, the Crown Hydro project might preclude such siting as well as interfere with the larger “Falls” project with which the Whitewater Trail is complementary.

In addition to these projects, the St. Anthony Falls Heritage Board (SAFHB), and longtime Heritage Board member and Hennepin County Commissioner Peter McLaughlin, filed comments on the board’s “Power of the Falls” plan and the update to that plan, “Changing Relationships to the Power of the Falls.”⁷⁵ The SAFHB is a legislatively created body composed of 22 members representing Hennepin County, the City of Minneapolis, MPRB, the Minnesota State Legislature, Minnesota Historical Society, State Historic Preservation Office, Minneapolis

Center.”

⁷² Tom Evers, Minneapolis Parks Foundation, November 21, 2017, p. 1; see also Minneapolis Parks Foundation, November 21, 2017, pp. 1-2.

⁷³ Phyllis Kahn, letter, November 20, 2017, page 1.

⁷⁴ The legislation is Minn. Stat., Section 85.0156, “Mississippi Whitewater Trail.”

⁷⁵ St. Anthony Falls Heritage Board (SAFHB), November 21, 2017 p. 1; Peter McLaughlin, letter, November 20, 2017, p. 1. Both the SAFHB comments and the McLaughlin letter attach the “Crown Hydro Electric Power Resolution.”

Heritage Preservation Commission, and Hennepin History Museum. On November 20, 2017, the Heritage Board adopted the “Crown Hydroelectric Power Resolution,” citing the “potential harm” that the project could cause to the “state supported interpretive mission” of its members.

The FL&D comments also noted the general incompatibility of the Crown Hydro project with the Regional Park Plan adopted by the MPRB, the Downtown Public Realm Framework of the City of Minneapolis and the tourism master plan adopted by Meet Minneapolis.⁷⁶

Other parties commented on the potential harm, incompatibility or inconsistency of the Crown Hydro project with ongoing redevelopment along the Central Riverfront. FL&D specifically listed six plans and proposals, some already underway, which conflict with Crown Hydro’s proposed site development.⁷⁷ These are: (1) the 2016 MPRB Central Mississippi Riverfront Regional Park Plan, (2) the Metropolitan Council Regional Parks Policy Plan 2030, (3) the 2014 St. Anthony Falls Heritage Board update, “Changing Relationships to the Power of the Falls,” (4) the 2016 City of Minneapolis “Downtown: Public Realm Framework Plan,” (5) the 2016 “Meet Minneapolis, Destination Transformation 2030,” and (6) the 2017 National Parks Conservation Association (NPCA) “Transforming the Lock Book.”

Another community group, Mississippi Park Connection, summarized the sentiment of those opposing the project in a statement by its Executive Director: “When the grant was awarded 16 years ago, the Crown proposal was already out of sync with our community’s vision for the redevelopment of the Riverfront. Its failure to make progress on site approval and permitting is hardly surprising given the conflict it has with the uses occurring and planned.”⁷⁸

FL&D noted that in the summer of 2017, 20 organizations and 5 government entities attended a coalition meeting supporting the lock as “the centerpiece of an iconic civic and cultural destinations, reflective of our shared history, for the use and enjoyment of all.”⁷⁹ Twelve members of this group went on to formally endorse this statement. A second coalition meeting held in the fall of 2017 was attended by 21 organizations and 4 government entities, of which the City of Minneapolis and MPRB passed resolutions supporting a bonding request to repurpose the Upper St. Anthony Falls Lock. As FL&D observed:

Notwithstanding this broad public and private support, further development of the Crown Hydro Project would foreclose development of a visitor’s center on the lock and dam structure, a central feature of The Falls proposal.⁸⁰

⁷⁶ FL&D, November 22, 2017, p. 3.

⁷⁷ FL&D, November 22, 2017, pp. 22-23.

⁷⁸ Mississippi Park Connection, November 17, 2017, p. 2.

⁷⁹ FL&D, November 22, 2017, p. 23.

⁸⁰ FL&D, November 22, 2017, p. 24.

A final consideration related to the passage of time since the Crown Hydro grant was initially approved is the changing nature of Minnesota's renewable energy portfolio and the technologies used to produce this energy, as emphasized in the comments of Senators Dziedzic and Champion.⁸¹ This has implications for the priorities and practices of Xcel's Renewable Development Fund. In its *Minnesota Renewable Energy Year in Review 2016*, for example, the DOC described the changes in Minnesota's renewable electricity energy mix over the decade from 2006 to 2016. In 2006, renewables represented 7 percent of total electricity energy production in the state, of which 1.1 percent was the result of hydroelectric production and 4 percent was from wind. By 2016, renewables had grown to 22 percent of total electricity energy produced. But hydro was only fractionally more of this total at 1.5 percent. Wind, meanwhile, had grown from 4 percent to 18 percent, or by 4 1/2 times. As the Dziedzic and Champion letter noted, "renewable energy technology has advanced."⁸²

Environmental, ecological and recreational concerns

Among the principal concerns of the stakeholders in the riverfront redevelopment process is the likely diversion of additional water flowing through St. Anthony Falls. This "drying up" in pursuit of further hydroelectric power, and its incompatibility with the enhanced use of the Central Riverfront for education, recreation and commercial purposes, led FL&D to conclude that the Commission's oversight responsibility was necessary. They said: "In short, the Crown Hydro project is no longer in the public interest. Accordingly, it should not continue to receive any public funds, even assuming it can find a path out of its moribund status."⁸³ As the senior Midwest program manager for the National Parks Conservation Association (NPCA) also commented, Crown Hydro's project is "ill-conceived" and "unlikely to receive any community support."⁸⁴

The long record of the Crown Hydro project and grant contract

Many of the commenting parties, led by FL&D, discussed the long and thus far unsuccessful attempt by Crown Hydro to secure a property site for its project. The Crown Hydro contract with Xcel began on January 17, 2002, with an award of \$5.1 million to construct a 3.2 MW hydroelectric plant on the West Bank of St. Anthony Falls. The grant contract was approved by the Commission on May 6, 2002. The original contract term was 20 months, ending August 31, 2003, which was described as "the last date reimbursable expenses can be incurred."⁸⁵ The contract listed nine milestones, which when met were to trigger payments to Crown Hydro from the RDF fund, then to be recovered from ratepayers. In the ensuing 16 years, according to Crown Hydro's comments, it has received about \$1.54 million in RDF grant funds. FL&D noted

⁸¹ Senators Dziedzic and Champion, December 15, 2017, p. 2.

⁸² Senators Dziedzic and Champion, December 15, 2017, p. 2.

⁸³ FL&D, November 22, 2017, pp. 24-25.

⁸⁴ National Parks Conservation Association (NPCA), December 7, 2017, p. 2.

⁸⁵ FL&D, November 22, 2017, p. 12, First Grant Contract, at Section 2.A.2.

that Section 16.B. of the contract allows termination for cause in the event of “[f]ailure to meet project milestones or deliverables.”⁸⁶

In order to implement the contract, Xcel petitioned the Commission to approve a PPA with Crown Hydro. The Commission approved the PPA in its June 10, 2003 Order, in Docket No. E-002/M-03-547. The PPA defines a number of terms including date of Commercial Operation, and what the milestone to achieve it entails, as well as what is meant by facility, site, term and security fund. In detailed comments, Senators Dziedzic and Champion noted that the PPA, in Section 12.1(c), states that a failure to meet the Commercial Operation Milestone shall result in default.⁸⁷ The PPA also requires Crown Hydro to enter into an interconnection agreement and to provide Xcel with monthly reports until the Commercial Operation Date is achieved. In a letter dated September 14, 2007, Xcel informed the Commission that due to difficulties facing the project, it remained in Force Majeure, a legal term meaning that unforeseeable circumstances prevented Crown Hydro from fulfilling the contract. Senators Dziedzic and Champion noted that Xcel’s RDF Quarterly Status and Progress Report of October 31, 2013 states that the project has remained in Force Majeure since October 31, 2007 due to an inability to obtain site control for construction.

Senators Dziedzic and Champion raised a number of questions concerning the status of the PPA, including whether it had been amended and updated over the period after it was signed, whether an interconnection agreement was ever signed, whether regular reporting had occurred and whether account had been taken of its Force Majeure status.⁸⁸

As FL&D noted, the original grant contract has been amended three times: in May, 2003, in April 2006 and in June, 2007. As of July, 2018, Crown Hydro had not secured control of a construction site. The First Amendment to the grant contract was filed on May 28, 2003, as part of the 1st RDF Funding Cycle Status and Progress Report. This amendment allowed the first project milestone (Engineering, Design and Permitting) to be changed from July 15, 2003 to December 15, 2004. The Second Amendment, on April 13, 2006, accompanied by a letter from Xcel filed with the Commission, was approved on June 2, 2006.⁸⁹ This Second Amendment, instead of setting specific dates for milestone completion, provided for time limits in numbers of days for milestone completion. These limits were set as the number of days after the date of property acquisition for the project site. The amendment required that if this site acquisition had not been completed by July 31, 2006, Crown Hydro would report to Xcel on the project’s status and provide another draft contract amendment.

Since no site was acquired, on June 15, 2007 Crown Hydro and Xcel entered into a Third Amendment, which Xcel described in a cover letter to the Commission. The letter stated that

⁸⁶ FL&D, November 22, 2017, p. 13.

⁸⁷ Senators Dziedzic and Champion, December 15, 2017, p. 6.

⁸⁸ Senators Dziedzic and Champion, December 15, 2017, pp. 4-6. Staff notes Xcel did not respond to questions from the two Senators concerning Force Majeure.

⁸⁹ Staff notes that, on June 6, 2006, the Commission issued an Erratum Notice to the June 2, 2006 Order, in E-002/M-00-1583.

the Third Amendment was in the “Type 2” category described in the Commission’s June 25, 2005 Order.⁹⁰ Type 2 amendments “involve minor changes to a contract’s meaning.”⁹¹ In light of the Type 2 designation by Xcel, the Company did not seek or receive Commission approval of the Third Amendment.⁹²

FL&D continued that, in its cover letter to the Third Amendment, Xcel reported that the RDF Board had suspended consideration of the Amendment until it could be informed about the discussions over a site location between Crown Hydro and the MPRB, which occurred in late 2006 and early 2007. As noted above, MPRB decided against granting a site to Crown Hydro based on its list of concerns. FL&D, supported by many other parties, noted that both the Second and Third Amendments required that further amendments be made if Crown Hydro failed to secure a property site by a certain date. In the Third Amendment, this date was October 31, 2007. As FL&D commented in November 2017:

It is undisputed that Crown Hydro has not acquired property for the project nor has the contract been amended since then. Thus, Crown Hydro is in clear violation of the project schedule and appears to have granted itself an indefinite extension of time to complete the project. Not only has Crown Hydro failed to meet its contractual commitments to complete the project in a timely manner, there is no basis upon which the Commission could determine when, or even if, the project will be completed.⁹³

Financial viability and appropriate technology concerns

Apart from the long history of the Crown Hydro effort to secure a site for its project at St. Anthony Falls, some parties raised concerns over the current and future financial viability of the project. Friends of the Riverfront, for example, noted that in due diligence exercises, the MPRB examined Crown Hydro’s finances and projections, which raised questions over the profitability of the project and the possibility that it might be abandoned during operation.⁹⁴ In the letter from Senators Dziedzic and Champion, they similarly raise broad questions about “the viability and feasibility of the project and its financing...”.⁹⁵

One of these concerns relates to litigation over interim financing for the turbines purchased for the project. As noted in the comments of Senators Dziedzic and Champion, Xcel’s May 4, 2017 RDF Quarterly Report notes that the Minnesota Court of Appeals upheld a summary breach of

⁹⁰ *Order Setting Rider, Approving Contract Amendments, and Requiring Continued Reporting*, in Docket E002/M-05-109, issued June 25, 2005.

⁹¹ The Order noted at page 6 that such minor changes “might include changing a schedule to accommodate circumstances beyond the parties’ control, the need to re-order or re-ship equipment to correct for contracting errors, delayed routine status reports, or minor changes in the scope of work...”.

⁹² FL&D, November 22, 2017, p. 21.

⁹³ FL&D, November 22, 2017, p. 21.

⁹⁴ Friends of the Riverfront, November 22, 2017, p.2.

⁹⁵ State Senators Dziedzic and Champion, December 15, 2017, p. 1.

contract judgement against Crown Hydro by the 4th District Court decided in April 2016.⁹⁶ Comments from Friends of the Riverfront also referenced the court action and Crown Hydro's shaky financial position, citing testimony from an attorney who formerly represented Crown Hydro in testimony to FERC in 2015, where he raised concerns over granting a license amendment given questions over whether Crown Hydro has "adequate resources to build, own and operate a hydro-electric project in downtown Minneapolis."⁹⁷

Crown Hydro response

In its initial comments in this docket, Crown Hydro addressed the applicability of Section 29 of the 2017 Legislation as it related to its project.⁹⁸ Crown Hydro briefly asserted that it was not obligated to return grant funds because it had none in its possession and that it was unnecessary for the Commission to take any other actions under Section 29 because it had made "significant progress" and provided details of this progress on a quarterly basis to Xcel. As part of this progress, Crown Hydro noted that it was going through an amendment process to its license with FERC to move the project forward.

In reply comments, Crown Hydro provided additional details on the project's status, its interactions with FERC, investments to date, opportunities for local participation, and the 2017 Legislation.⁹⁹

First, Crown Hydro emphasized that RDF funds had already been committed to the project (\$1.54 million) accompanied by its own investments of over \$5 million, and that its continued investments relied on support from the RDF grant. In describing its progress, Crown Hydro noted the amended license application to the Corps of Engineers, begun in 2011, as well as the team of advisors it had assembled. It also noted that it was working with FERC staff in connection with the National Historic Preservation Act's Section 106 process. The Section 106 process requires FERC to address the project impacts on historic sites and to coordinate its review of those impacts with the cultural and environmental impact studies conducted by other governmental authorities and affected Indian tribes.

Respecting parties' concerns over reduced water flows due to its project, Crown Hydro claimed that it would increase the limit on the level of the falls so that flows would never be less than 300 cfs, higher than levels maintained by Xcel of 100 cfs.¹⁰⁰ It also expressed a willingness to integrate its project with various planning exercises for the area in cooperation with local groups critical of the project, utilizing the FERC 106 process as a basis for this planning and participation.

⁹⁶ Dziedzic and Champion, December 15, 2017, p. 4.

⁹⁷ Friends of the Riverfront, November 22, 2017, p. 2.

⁹⁸ Crown Hydro, November 22, 2017, pp.1-2.

⁹⁹ Crown Hydro, December 15, 2017.

¹⁰⁰ Crown Hydro, December 15, 2017, p. 4, citing Exhibit C.

In addition to the ratepayer funds and its own investments, Crown Hydro noted that its use of RDF funds demonstrates a high level of cost-effectiveness in terms of the amount of electrical energy generated in relation to grant funds to be spent. It noted that Xcel's initial comments (Exhibit E) show that of the seven grants addressed, the Crown Hydro project had the lowest RDF grant cost-per-kW generated.¹⁰¹

Crown Hydro's reply comments reiterated its reasoning that no action is necessary under Section 29 of the 2017 Legislation. It argued that because it has already commenced construction, it does not meet the fourth requirement stipulated in the law, requiring a transfer of grant funds (the requirement that construction has not begun). In support, it noted that FERC concluded that construction began in 2007 when Crown Hydro paid for the turbines constructed specifically for the project. Further, it argued that since it has no RDF funds in its possession that were granted but not expended, the 2017 Legislation cannot be interpreted to require termination of the contract and transfer of remaining granted funds.

In sum, Crown Hydro argued that it has no funds available to transfer that have not already been spent on the project, a position that it noted is also supported by the DOC. It also suggested that grants to other projects would need to be revoked if its own grant was terminated based on Section 29 of the 2017 Legislation.

Department of Commerce (DOC)

The DOC concluded that no Commission action was needed at this time on the Crown Hydro grant contract under Section 29 of Article 10 in the 2017 Legislation. This conclusion was based on the DOC's agreement with Crown Hydro that the project meets only three of the four necessary conditions requiring transfer of unexpended grant funds to the clean energy fund, which the 2017 Legislation created.¹⁰² The DOC agreed with Crown Hydro that the project did not meet the fourth condition because it accepted Crown Hydro's contention that construction had begun. Further, even if Crown Hydro met all four conditions, the DOC concluded that the 2017 Legislation requires that Crown Hydro, not Xcel, is the party obligated to transfer any unexpended funds.¹⁰³ The DOC also accepted Xcel's statement in the third quarter 2017 update on the project that there is ongoing activity.¹⁰⁴

The DOC also rejected the FL&D argument that the Third Amendment to the Crown Hydro contract had not been approved by the Commission in 2007.¹⁰⁵ The DOC concluded that the

¹⁰¹ Xcel, November 22, 2017, Attachment A, cited in Crown Hydro reply comments, December 15, 2017, p. 6.

¹⁰² Staff assumes the legislature intended the "clean energy advancement fund account" referred to in Section 29 of the 2017 Legislation to be the new renewable development account (RDA).

¹⁰³ DOC, November 22, 2017, p. 23.

¹⁰⁴ Xcel Quarterly Status Report, in 12-1278, October 26, 2017, p. 3.

¹⁰⁵ This argument was made by FL&D in ft. 4 of comments filed August 28, 2017, in Docket E-002/M-00-1583, cited in DOC November 22, 2017, p. 24, ft. 47.

Commission formally approved the Second Amendment and supported Xcel's position that the Third Amendment was only a minor "Type 2" adjustment. The Third Amendment therefore did not materially alter the Second Amendment and did not require further Commission approval. The DOC concluded that the last amendment to the contract is a Commission-approved contract.

Xcel Energy (Xcel)

In its reply comments, Xcel addressed three separate issues.¹⁰⁶ First, it considered whether further action is needed under Section 29 of the new legislation. Second, it discussed the process followed in signing the Third Amendment to the grant contract. Third, it discussed the reasons why a potential fourth amendment to the grant contract might be necessary.

First, Xcel took no position on whether Commission action is needed on the Crown Hydro project under Section 29. It asserted that the Company's own actions were in compliance with Section 29.¹⁰⁷ Xcel supported this position by referencing several attachments to its November 22, 2017 comments. The first, Attachment A, describes Xcel's June 30, 2017 correspondence with Crown Hydro and other RDF grant recipients informing them that under Minnesota Laws 2017 (Section 29) they must "return any unspent RDF funds if certain conditions regarding site control and the start of construction have not been achieved."¹⁰⁸ These letters, including one to Crown Hydro, were in Attachment E to Xcel's November 22, 2017 comments in this docket.

In Attachment B, Xcel reproduced its September 13, 2017 reply to comments made by FL&D in response to Xcel's second quarter, 2017 RDF report. This quarterly report also described why Crown Hydro believed it was not required to transfer funds originally granted to it that were as yet unpaid to Crown Hydro. Specifically, in its August 16, 2017 letter to Xcel, Crown Hydro's counsel argued that, in a 2003 FERC determination, FERC had recognized that construction had begun. This was in contradiction to the condition in the 2017 Legislation requiring transfer of unspent funds if construction had *not* begun. Second, Crown Hydro's counsel argued that only funds paid out as a result of milestones achieved needed to be recovered and that ratepayers had not been charged by Xcel for milestones yet to be achieved. As Xcel noted, the RDF grant to Crown Hydro was part of a group of "performance-based contracts where grantees are awarded monies after the grantee has achieved certain agreed upon milestones." The Company continued, it "does not recover from its customers the grant monies paid out until certain 'known and measurable' conditions are met."¹⁰⁹

Second, Xcel noted that parties commented on the RDF process surrounding the contract Third Amendment, which effectively modified the timeline for the project, calculating the dates for

¹⁰⁶ Xcel, December 15, 2017, pp. 6-7.

¹⁰⁷ Xcel, November 22, 2017, p. 2.

¹⁰⁸ Xcel, November 22, 2017, Attachment A, p. 2.

¹⁰⁹ Xcel, November 22, 2017, Attachment B, p. 2, reproducing Xcel's September 13, 2017 Reply, ft. 2, citing Commission Order No. E002/M-10-1054, *Order Approving 2011 Renewable Development Fund Rate Rider*, March 17, 2011.

contract milestones based on a specific event: the “acquisition of the project property sufficient to comply with Federal Energy Regulatory Commission requirements.”¹¹⁰ For example, under the Third Amendment, Crown Hydro should achieve Milestone 4 two hundred days (as opposed to a date certain) after it acquires the project property. Since the outstanding RDF contract milestones (Milestones 4 through 8) relate to construction, installation, and commissioning of the facility, Xcel pointed out that FERC approval of Crown Hydro’s permit amendment is an important step in it achieving the remaining milestones.¹¹¹

Third, Xcel noted that the Third Amendment states:

In the event acquisition of Project property has not occurred by 10/31/2007, Contractor shall present a detailed report regarding acquisition plan and efforts necessary to achieve acquisition of property and provide an updated draft amendment to Xcel Energy for review.

The 2007 Third Amendment therefore stipulated that if no property acquisition had occurred by October 31, 2007, Crown Hydro would provide an updated draft amendment for Xcel to review. However, after searching its records, Xcel concluded that Crown Hydro never provided the required draft amendment.¹¹² In light of Crown Hydro’s failure to provide the required draft amendment, Xcel suggested the option of Commission action to order it. The Company proposed that the Commission could direct the Company and Crown Hydro to enter into another contract amendment that “provides specific dates (or a certain amount of time) by which Crown Hydro will meet outstanding milestones.”¹¹³

VII. Staff Discussion on Issue Two

Should the Commission terminate the Crown Hydro RDF grant contract (AH-01) or take some other action?

This is the first time that the Commission has taken up the issues surrounding the Crown Hydro project since the grant contract and its amendments were considered over a decade ago. The October 30, 2017 Notice issued by the Commission allowed it the opportunity to review the comments from many parties, and to focus its attention on the challenges that the grant has faced. In response to these comments and in considering potential actions, the Commission should recognize its broad authority and responsibility under Minn. Stat. 216B. The

¹¹⁰ According to Xcel, the Third Amendment is different from RDF contract amendments from subsequent cycles that extended timelines. The Third Amendment bases the timeline for meeting milestones on an event (site acquisition) that is planned to happen at some point in the future whereas, Cycle 4 contract amendments that change a project schedule do so by identifying a certain amount of time (for example, an additional year) for the extension.

¹¹¹ Xcel, December 15, 2017, pp. 6-8.

¹¹² Xcel, December 15, 2017, p. 7.

¹¹³ Xcel, December 15, 2017, p.7.

Commission's authority in this case extends beyond the RDF statute and includes attention to public policy and the public interest.

Staff believes there is strong evidence in the record of this case to support a Commission decision directing Xcel to terminate the Crown Hydro grant contract. This evidence includes Crown Hydro's continued inability to secure a site, which in light of the Corps disposition study will likely continue into 2019. It also includes evidence of widely recognized incompatibility between the project and the redevelopment of the riverfront over the past decade and a half, including changes in land use that have altered its physical character. In addition, the Crown Hydro project runs counter to at least six completed or ongoing public and private planning efforts, including those of the MPRB, the Metropolitan Council, the SAFHB, the City of Minneapolis, Meet Minneapolis, and the NPCA. There is also the issue of Crown Hydro's non-performance under the Third Amendment as raised by Xcel. Staff reiterates that the Commission has broad authority and responsibility to protect the public interest under Minn. Stat. 216B. The Commission's authority in this case extends beyond the RDF statute and implementation of the program.

The Commission should note in particular that those opposing additional RDF grant funding for the project span a wide range of private and public groups, including many community organizations with long involvement in the St. Anthony Falls neighborhood, as well as representatives of the City of Minneapolis, Hennepin County and members of the state legislature. Their positions are well-documented and offer five main arguments.

First, the proposed Crown Hydro site is incompatible with the pattern of economic and cultural development in the area over the last decade and a half, which has changed the character of the St. Anthony falls location. Community groups and public agencies have developed numerous plans for further redevelopment with which Crown Hydro's proposed project is incompatible. Second, environmental and ecological concerns exist over the water levels resulting from the project, which may compromise recreational and aesthetic values. Third, even after 16 years, the lack of a secure and agreed upon site has created continued uncertainty over project milestones and whether and when these milestones can be met. Fourth, there remain issues of financial viability and whether a hydroelectric facility is an appropriate technology for the RDF and for the specific location.

In reply comments, Crown Hydro argued that although 16 years had passed since the RDF grant was awarded, and no secure site had yet been acquired, the project was progressing nonetheless. Crown Hydro listed a series of events, beginning with its initial revised site proposal to the Corps in 2011, and ending with its consultations with the National Historic Trust Association (NHTA) over the Section 106 process in 2017, as evidence of this progress. Crown Hydro also argued that the \$1.54 million in grant funding from the RDF and \$5 million of its own investments are foregone, and that "[p]ulling the RDF grant at this point would actually waste ratepayer funds by making the project impractical to complete, thus, throwing away \$1,500,000 of ratepayer funds already spent."¹¹⁴ It also emphasized that apart from the \$1.54 million in

¹¹⁴ Crown Hydro, December 15, 2017, p. 2.

ratepayer funds already committed and recovered from ratepayers, no further funds will need to be recovered until additional milestones are reached.¹¹⁵

Response by Xcel and the DOC

In its 2017 legislation affecting the RDF grant program, the legislature introduced Section 29, which provided for the transfer of funds from some existing projects to the new RDA administered by MMB. This may in part have been a reflection of legislative concern and attention to projects such as Crown Hydro, and it certainly was an indication to the Commission that a Notice was appropriate soliciting parties' comments. Whether Section 29 applies to Crown Hydro's situation is a subject of debate in this docket, although whether it applies to the Crown Hydro project or not, staff questions whether it is as significant as some of the larger challenges to continuation of the Crown Hydro grant.

As noted by the DOC, Section 29 requires a transfer of unexpended grant funds and sets out four project conditions, all four of which an RDF project must meet to result in such a transfer. Crown Hydro argued, and DOC and Xcel appeared to accept, that the fourth one of these conditions does not apply to the project. In addition, the DOC noted that Crown Hydro was "not under the jurisdiction of the Commission" and that for this reason too no Commission action is needed.¹¹⁶ The four conditions in Section 29 of the 2017 Legislation were:

- the grant was awarded more than five years before the effective date of this section
- the grant recipient has failed to obtain control of the site on which the project is to be constructed
- the grant recipient has failed to secure all necessary permits or approvals from any unit of government with respect to the project
- construction of the project has not begun

Xcel and the DOC appear to accept the Crown Hydro position that the project does not meet the fourth condition—that construction has not begun—and Crown Hydro's assertion that its purchase of turbines in 2003 constituted the beginning of construction.

FL&D disputes this contention, noting that the letter from FERC written to Crown Hydro in 2003, which Crown Hydro uses to support its position that Section 29 does not apply, is overtaken by a much more recent FERC letter in 2014. The FERC letter of June 19, 2003 concluded that the purchase of turbines satisfied the definition (under the Federal Power Act) that construction had begun.¹¹⁷

¹¹⁵ Staff notes that although grant funds spent early in the Crown Hydro project are foregone, there was never an expectation that every RDF project would reach completion, and some have not. There is precedent for the Commission to decide against continuing a project that is facing insuperable difficulties. *See generally* Office of the Legislative Auditor Evaluation Report: RDF Fund (October 2010).

¹¹⁶ DOC, November 22, 2017, p. 23.

¹¹⁷ FL&D, November 22, 2017, ft. 6, p. 8, Appendix B.

However, on November 4, 2014 a subsequent letter from FERC to Crown Hydro stated that “construction has not begun,” noting as well that at least concerning the FERC license, “there’s nothing for the Commission to act upon.”¹¹⁸ As FL&D pointed out: “Crown Hydro’s reliance on the 2003 FERC determination is effectively negated by FERC’s subsequent acknowledgement that construction has not begun.”¹¹⁹ FL&D used this evidence to suggest that Crown Hydro is indeed subject to Section 29. It also cited Minnesota Statutes 216C on the definition of construction as “significant physical alteration of a site to install or enlarge a large energy facility,” a definition that the purchase and storage of turbines does not meet.¹²⁰

FL&D maintained that whatever FERC’s position on whether construction has or has not begun, the new 2017 legislation does not rely on FERC’s definition or understanding of construction, but on whether continued grant funding is “consistent with the public interest as determined by the Minnesota Legislature.” FL&D observed that whatever FERC processes are at work, “FERC has no role to play in how the Commission exercises oversight over the RDF program.”¹²¹

Staff notes that the Commission may not want to rely on representations of FERC’s position on the Crown Hydro project as provided by Crown Hydro or the Central Riverfront Stakeholders because they may not constitute a complete record of the FERC process. Staff directs the Commission to Exhibit A of the December 15, 2017 comments by Senators Dziedzic and Champion, which provides a summary and timeline of Crown Hydro’s attempts to secure FERC permitting for its project, beginning in 1991 and extending to the Army Corps “disposition study” to end in 2019. Staff believes that the FERC licensing issue remains a source of uncertainty over whether the project can move forward.

To summarize, Xcel, the DOC and Crown Hydro all appeared to agree that no transfer of funds under Section 29 is required because Crown Hydro’s situation does not meet the fourth condition for a transfer. FL&D disagreed that construction had begun, citing the November 4, 2014 letter from FERC to Crown Hydro stating that construction has not begun. More importantly however, due to its current project status, Crown Hydro currently has no RDF funds to transfer.

Apart from the different conclusions reached by the parties over whether Section 29 implies that in Crown Hydro’s case certain actions need to be taken, there remain the large number of comments critical of the project raised by the Central Riverfront Stakeholders. As noted by FL&S, the reasons for Commission termination of grant funding are larger, and largely independent, of either FERC’s determination on construction or the parties’ positions on Section 29. These go to the Commission’s responsibility for RDF decisions that are in the public interest.

¹¹⁸ FL&D, November 22, 2017, ft. 7, p. 8, Appendix C.

¹¹⁹ FL&D, November 22, 2017, p. 8.

¹²⁰ FL&D, November 22, 2017, pp. 8-10.

¹²¹ FL&D, November 22, 2017, p. 9.

Staff notes that FERC’s interpretation of the word “construction” in the statutes and regulations under which it operates has no bearing on how the Commission interprets that word in Section 29. The Commission’s interpretation of “construction” must be based on the plain meaning of the term as it is used in Section 29, and to the degree that is ambiguous, based on the Legislature’s intent in using that word as may be revealed by reviewing the use of the word in statutes dealing with circumstances comparable to those addressed by Section 29. The statutes and Commission rules governing the Commission’s authority over the siting and routing of energy facilities define construction generally to mean the physical construction of an energy facility on its approved site or route, not the purchasing of various parts of the energy facility that will be constructed.

But even if this fourth condition for the required transfer of RDF grant funds has been met, that is, that construction of the Crown Hydro project has not yet begun, all parties agree that Crown Hydro does not actually have any RDF grant funds to transfer. Based on this, Xcel and DOC believe there is no action for the Commission to take under this legislative provision.

However, Crown Hydro seems to believe, and possibly Xcel and the Department also believe, that Crown Hydro could at some later point trigger further RDF grant payments by obtaining a site for its project. This strikes staff as flying in the face of the Legislative intent of Section 29. The evident intent of the Section is to require a RDF project that has met the four legislative conditions to not only transfer all unexpended RDF grant monies it holds to the clean energy advancement fund (CEAF) account, but also to apply to the CEAF account for any further funding the project may need. If the Commission concludes that the Crown Hydro project has met the four legislative conditions of Section 29, the Commission may want to clarify whether providing any further RDF funding to Crown Hydro is consistent with the terms and intent of Section 29 or not.

Apart from the different conclusions reached by the parties over the application of Section 29 to Crown Hydro’s case, there remain the large number of comments critical of the project raised by the Central Riverfront Stakeholders. Staff notes that Xcel, Crown Hydro, and the DOC did not appear to respond directly to many of these issues raised by the parties.¹²² First, and most notably, Xcel and Crown Hydro did not comment directly on whether settlement can or will be reached with the Corps on a secure site, which affects the project’s overall viability. In its reply comments, Xcel acknowledged that site determination remains unsettled.¹²³ This lack of certainty is further complicated by the Corps’ aforementioned “disposition study” of possible removal and retirement of locks and dams in the Minneapolis area, to be completed in January 2019.¹²⁴

Second, neither Xcel nor Crown Hydro responded directly to the asserted incompatibility of the proposed project with the redevelopment pattern of the riverfront since 2002. The Commission may wish to ask Xcel and the DOC, and Crown Hydro, to address this issue.

¹²² The DOC filed initial comments in this docket on November 22, 2017, but did not file reply comments.

¹²³ Xcel, December 15, 2017, p. 7.

¹²⁴ FL&D, November 22, 2017, p. 20.

Third, neither Xcel nor the DOC commented directly on Crown Hydro's represented progress through the Section 106 review process with FERC, or its assurances that it was willing to work with the public and private parties whose planning exercises are in conflict with the project. Crown Hydro stated generally in reply comments that its project "could be incorporated into their plan(s), but through interpretive aspects, could improve the area." It added, "[s]ome parties have different plans with specific inclusions that they want with the park, which Crown Hydro is interested in facilitating."¹²⁵

Fourth, Xcel, Crown Hydro and the DOC did not specifically take up environmental, ecological or recreational concerns voiced by the large group of Central Riverfront Stakeholders. Crown Hydro stated that concerns over reduced river flow and water levels are such that "it has made clear this will not happen" and is willing to accommodate the desire for "canoe portage opportunities."¹²⁶

Fifth, while Crown Hydro defended the financial aspects of the project by comparing its grant cost per kW to other RDF project grants and by arguing that ratepayers would only face recovery of additional costs if project milestones were met, staff notes this is not responsive to the internal financial viability of the project. Many parties have questioned the financial viability of the project but Xcel and the DOC have not directly addressed that issue.

The Crown Hydro project and grant contract was initially approved as part of the Cycle 1 RDF grants initiated in 2001 (project selection approved in 2002). The initial grant contract had a completion deadline of August 31, 2003. Over the next 16 years the contract was amended three times, in 2003, 2006 and 2007. All three amendments related to the project timeline and schedule. The First Amendment, dated May 28, 2003, pushed the project deadlines out by roughly a year and a half. The Second Amendment, dated April 13, 2006, reordered milestones and again extended the project schedule.¹²⁷ The Second Amendment also gave specific amounts of time by which Crown Hydro was obligated to complete milestones, projected out from the date of site acquisition. The Third Amendment, dated June 15, 2007, made minor adjustments to the second amendment in light of the failure of Crown Hydro to secure a site, requiring Crown Hydro to provide a detailed property acquisition plan and yet another amendment if property was not acquired for a site by a final deadline of October 31, 2007.

Staff notes that FL&D stated, "[i]t is undisputed that Crown Hydro has not acquired property for the project nor has the contract been amended since then [2007]. Thus, Crown Hydro is in clear violation of the project schedule and appears to have granted itself an indefinite extension of time to complete the project. Not only has Crown Hydro failed to meet its contractual commitments in a timely manner, there is no basis upon which the Commission

¹²⁵ Crown Hydro, December 15, 2017, p. 4. See also Crown Hydro's project update on the continuing application for an amendment to its FERC license, in Xcel's 2nd Quarter, 2018 RDF Status Report, in 12-1278, August 3, 2018.

¹²⁶ Crown Hydro, December 15, 2017, pp. 4-5.

¹²⁷ FL&D, November 22, 2017, pp. 13-14.

could determine when, or even if, the project will be completed.”¹²⁸ To date a site for the Crown Hydro project still has not been finalized.

Apart from these contractual issues, there are issues of public policy and the public interest. The record of this case shows evidence of widespread opposition to further funding of the Crown Hydro project. As noted in the summary of comments, these interests include not just private individuals or groups with a vested interest in the redevelopment of the riverfront, but public agencies and city, county and state officials responsible for public policy affecting the area and its economy. Balancing all of the interests in this case and its responsibility under statute, the Commission may decide that continuation of Crown Hydro RDF project funding is no longer in the public interest.

The Commission may also want to consider the contract compliance issues raised by several parties and by Xcel. As FL&D noted, the Crown Hydro grant contract is subject to termination for failure to meet the project schedule relating to milestones, dates, and deliverables. The original contract and the three amendments all included the termination provision relating to project deadlines. This included the October 31, 2007 deadline for acquiring a project site. Xcel recognized that from the final deadline of October 31, 2007 until the end of 2017 Crown Hydro made efforts to find a site for its project. But even Xcel noted irregularities in Crown Hydro’s performance relative to the grant contract and the Third Amendment signed in 2007. Crown Hydro did not provide Xcel with a fourth amendment to the contract related to finding a site as required under the Third Amendment. This raises the question of whether Crown Hydro fully complied with its contractual obligations.¹²⁹

Specifically, Xcel offered that if the Commission wishes to direct any action regarding the Crown Hydro RDF project, one option would be to direct the Company and Crown Hydro to enter into another contract amendment that provides specific dates (or a certain amount of time) by which Crown Hydro will meet the outstanding milestones.¹³⁰

Decision paths for the Commission

The Commission may wish to consider several alternative decision paths in addressing the Crown Hydro grant contract. These range from taking no action and allowing the project to continue, to immediately terminating the project grant and ending any future recovery of grant funds from ratepayers. It could also require Xcel and Crown Hydro to amend the conditions in

¹²⁸ FL&D, November 22, 2017, p. 21.

¹²⁹ The Third Amendment to Crown Hydro’s grant contract is attached to the DOC’s November 22, 2017 comments, Attachment 20. In its reply comments, Xcel noted that Crown Hydro is out of compliance with the following language contained in the Third Amendment: “In the event acquisition of Project property has not occurred by 10/31/2007, Contractor shall present a detailed report regarding acquisition plan and efforts necessary to achieve acquisition of property and provide an updated draft amendment to Xcel Energy for review.”

¹³⁰ Xcel, December 15, 2017, p. 7.

the contract yet again, or seek specific responses from Xcel, Crown Hydro, and/or the DOC to issues raised by stakeholders, further developing the record of the case.

The first pathway is a decision by the Commission to take no action on the grant contract, as recommended by the DOC and Crown Hydro, and to continue grant support for the project if milestones are met. The DOC appears to believe that this course is possible and that progress can continue under the current contract as amended. This recommendation is based on the DOC's conclusion (and the Crown Hydro argument) that the fourth condition in Section 29—that construction had not begun—is not met. It is also based on the DOC's conclusion that the current Crown Hydro grant contract (Third Amendment) is a Commission-approved contract. Taking this first pathway suggests that the Commission agrees that the requirements of Section 29 do not present any obstacle to Crown Hydro continuing its efforts under the current contract, as amended, to meet its remaining project milestones and receive the additional RDF grant monies associated with meeting those milestones.

If the Commission determines that it needs further information and clarification on specific issues, a second pathway would be to ask Xcel, the DOC and Crown Hydro to respond to specific issues within a specified timeframe. These might include:

- the status of the plans of the Central Riverfront Stakeholders and various public agencies and groups for redevelopment of the St. Anthony Falls area, and whether those plans are compatible with the continuation of Crown Hydro project and grant funding
- whether a secure site for the project is feasible in the near future, given local opposition, the status of the FERC licensing process, and the ongoing Corps disposition study
- whether environmental, ecological and recreational concerns, including water levels, invasive species and canoe and whitewater activities are consistent with construction and continued funding of a new hydroelectric facility
- whether the provisions of the grant contract, as amended, respecting milestone completion, termination and reporting have been complied with
- whether the indeterminate status of the FERC licensing process for the Crown Hydro project can be resolved so as to allow the project to move forward, and
- whether the existing PPA for the project and the Force Majeure status associated with it, as well as the PPA's list of events (Article 12) that could lead to project default have implications for project continuation and completion.¹³¹

A third pathway, involving more direct Commission action, would be for the Commission to exercise its supervisory responsibility under the RDF statute and/or its general authority under 216B and require Xcel to terminate any further funding under the RDF Crown Hydro grant (AH-01) for failure to perform and meet expected milestones, and/or for other reasons. This would

¹³¹ Staff notes that the Crown Hydro project PPA was not noticed in this docket. Although issues surrounding the PPA were raised by the Central Riverfront Stakeholders, notably Senators Dzedzic and Champion, none of the three parties—Xcel Energy, Crown Hydro or the Department responded directly.

be to find that the project's progress has been insufficient, as suggested by FL&D and other stakeholders, and that further funding and recovery of such funds from ratepayers is not warranted.

If it follows this third pathway, the Commission may decide to direct Xcel to terminate the grant contract for cause based on evidence relating to the following factors. First is the apparent inability, after 16 years of effort, to find a secure site for the project. Second is the wide standing public opposition to the continued funding of the project. Third are possible irregularities connected to the grant contract, specifically Xcel's concern over Crown Hydro's failure to file a fourth amendment as required under the Third Amendment. Taken together these factors among others may lead the Commission to find that continuing the Crown Hydro project is not in the public interest.

A fourth pathway, the one offered by Xcel, would be that if the Commission wishes to direct any action regarding the Crown Hydro project, it could direct the Company and Crown Hydro to enter into another contract amendment that provides specific dates or amounts of time by which Crown Hydro will meet outstanding milestones, such as for project site settlement. Staff notes that if such milestones are unmet by such a date or in a given amount of time, it would presumably lead to termination of the grant. Staff also notes that once filed, the Commission may decide to seek comments on the contract amendment from interested parties, which would likely result in many of the same comments from the current docket being refiled.

Staff believes that the first pathway, as proposed by the DOC, is based on a fairly narrow reading of contract terms. The second pathway is simply to expand the record. The third is the clear preference of the Central Riverfront Stakeholders and involves the most direct action based on the record and a weighing of considerations of public interest. The fourth is an option that would continue the project in the near term and allow Crown Hydro further opportunities to attempt to acquire a site and meet milestones, but which might eventually end in an outcome similar to the third.

In sum, the Commission may decide to take any of the following actions: (1) take no action on the Crown Hydro project and grant contract, as supported by the DOC and Crown Hydro, (2) expand the record by requiring Xcel (and Crown Hydro and the DOC, as deemed appropriate) to respond to specific issues raised by the Central Riverfront Stakeholders, (3) direct Xcel to terminate the grant contract based on evidence of Crown Hydro's continued inability to secure a site, strong public opposition due to widely recognized incompatibility with riverfront development, and possible non-performance under the contract, or (4) require Xcel and Crown Hydro to enter into another contract amendment that provides specific dates for meeting milestones.

VIII. Decision Options

A. Crown Hydro RDF grant contract (AH-01)

1. Order Xcel to terminate the RDF grant contract with Crown Hydro (Project AH-01), and to discontinue grant payments under the contract. (*Central Riverfront Stakeholders*)
2. Order Xcel to renegotiate an amended RDF grant contract with Crown Hydro (Project AH-01) and to file the amended contract with the Commission for approval with 30 days of the Order issue date in this matter. (*Xcel's position if the Commission decides to take action on the Crown Hydro grant contract.*)
3. Take no action on the RDF grant contract with Crown Hydro (Project AH-01) at this time. (*Department, Crown Hydro*)
4. Find that the Commission has insufficient information to take action on the RDF grant contract with Crown Hydro (Project AH-01) at this time. Order Xcel, and ask the DOC and Crown Hydro, to provide, as they are able to, additional information responding to specific issues raised by the parties, including:
 - (a) the status of the plans of the Central Riverfront Stakeholders and various public agencies and groups for redevelopment of the St. Anthony Falls area, and whether those plans are compatible with the continuation of Crown Hydro project and grant funding
 - (b) whether a secure site for the project is feasible in the near future, given local opposition, the status of the FERC licensing process, and the ongoing Corps disposition study
 - (c) whether environmental, ecological and recreational concerns, including water levels, invasive species and canoe and whitewater activities are consistent with construction and continued funding of a new hydroelectric facility
 - (d) whether the provisions of the grant contract, as amended, respecting milestone completion, termination and reporting have been complied with
 - (e) whether the indeterminate status of the FERC licensing process for the Crown Hydro project can be resolved so as to allow the project to move forward in a reason timeframe
 - (f) whether the existing PPA for the project and the Force Majeure status associated with it, as well as the PPA's list of events (Article 12) that could lead to project default, have implications for project continuation and completion

This information should be filed in writing within 30 days of the Commission Order in this matter.

B. 2017 Legislation and the RDF fund transfer

1. Approve Option 2 as calculated by the DOC, including the assumptions in this option regarding the correct RDA transfer payment and treatment of the December 31, 2017 unencumbered cumulative balance, 2017 tracker account activity, and 2018 RDF rate rider factor of \$0.001318 per kWh. (*Xcel Energy*)
2. Approve Option 2 as calculated by the DOC, including Xcel's proposed 2017 RDF tracker account activity and 2018 RDF rate rider factor of \$0.001318 per kWh, but find that the December 31, 2017 unencumbered tracker balance, and any future unencumbered funds, will remain as a liability on the Company's books and as an entry in the RDF tracker account, until the Company is directed by the Commission or by clarifying statute to take some other action regarding the unencumbered tracker balance amount.
3. Approve Option 3 as calculated by the DOC, including the assumptions in this option regarding the correct RDA transfer payment and treatment of the December 31, 2017 unencumbered cumulative balance, 2018 tracker account activity, and 2018 RDF rate rider factor of \$0.002044 per kWh.
4. Approve Option 4 as calculated by the DOC, including the assumptions in this option regarding the correct RDA transfer payment and treatment of the December 31, 2017 unencumbered cumulative balance, encumbered funds associated with the Crown Hydro grant contract, 2017 tracker account activity, and 2018 RDF rate rider factor of \$0.002163 per kWh.

C. Separate proceeding on the implementation of the 2017 Legislation

1. Direct staff to open a new docket and issue a notice seeking comments on the additional issues raised by Xcel and the DOC related to the application of the 2017 Legislation, including but not limited to the issues of administrative costs, RDA administrative process and procedures, and cost recovery.
2. Take no action.

D. Compliance filings/effective date

1. Require Xcel to submit a compliance filing reflecting the Commission's decisions in this matter within 30 days of the Order issue date. Find that the 2018 RDF rate rider factor approved by the Commission will be effective for bills beginning October 1, 2018.

2017 Session Laws

Chapter 94
Article 10, Section 3

Minnesota Statutes 2016, section 116C.779, subdivision 1, is amended to read:

Subdivision 1. Renewable development account. (a) The renewable development account is established as a separate account in the special revenue fund in the state treasury. Appropriations and transfers to the account shall be credited to the account. Earnings, such as interest, dividends, and any other earnings arising from assets of the account, shall be credited to the account. Funds remaining in the account at the end of a fiscal year are not canceled to the general fund but remain in the account until expended. The account shall be administered by the commissioner of management and budget as provided under this section.

(b) On July 1, 2017, the public utility that owns the Prairie Island nuclear generating plant must transfer all funds in the renewable development account previously established under this subdivision and managed by the public utility to the renewable development account established in paragraph (a). Funds awarded to grantees in previous grant cycles that have not yet been expended and unencumbered funds required to be paid in calendar year 2017 under paragraphs (f) and (g), and sections 116C.7792 and 216C.41, are not subject to transfer under this paragraph.

(c) Except as provided in subdivision 1a, beginning January 15, 2018, and continuing each January 15 thereafter, the public utility that owns the Prairie Island nuclear generating plant must transfer to a renewable development the renewable development account \$500,000 each year for each dry cask containing spent fuel that is located at the Prairie Island power plant for each year the plant is in operation, and \$7,500,000 each year the plant is not in operation if ordered by the commission pursuant to paragraph ~~(e)~~ (i). The fund transfer must be made if nuclear waste is stored in a dry cask at the independent spent-fuel storage facility at Prairie Island for any part of a year.

~~(b)~~ (d) Except as provided in subdivision 1a, beginning January 15, 2018, and continuing each January 15 thereafter, the public utility that owns the Monticello nuclear generating plant must transfer to the renewable development account \$350,000 each year for each dry cask containing spent fuel that is located at the Monticello nuclear power plant for each year the plant is in operation, and \$5,250,000 each year the plant is not in operation if ordered by the commission pursuant to paragraph ~~(e)~~ (i). The fund transfer must be made if nuclear waste is stored in a dry cask at the independent spent-fuel storage facility at Monticello for any part of a year.

(e) Each year, the public utility shall withhold from the funds transferred to the renewable development account under paragraphs (c) and (d) the amount necessary to pay its obligations under paragraphs (f) and (g), and sections 116C.7792 and 216C.41, for that calendar year.

(f) If the commission approves a new or amended power purchase agreement, the termination of a power purchase agreement, or the purchase and closure of a facility under section 216B.2424, subdivision 9, with an entity that uses poultry litter to generate electricity, the

public utility subject to this section shall enter into a contract with the city in which the poultry litter plant is located to provide grants to the city for the purposes of economic development on the following schedule: \$4,000,000 in fiscal year 2018; \$6,500,000 each fiscal year in 2019 and 2020; and \$3,000,000 in fiscal year 2021. The grants shall be paid by the public utility from funds withheld from the transfer to the renewable development account, as provided in paragraphs (b) and (e).

(g) If the commission approves a new or amended power purchase agreement, or the termination of a power purchase agreement under section 216B.2424, subdivision 9, with an entity owned or controlled, directly or indirectly, by two municipal utilities located north of Constitutional Route No. 8, that was previously used to meet the biomass mandate in section 216B.2424, the public utility that owns a nuclear generating plant shall enter into a grant contract with such entity to provide \$6,800,000 per year for five years, commencing 30 days after the commission approves the new or amended power purchase agreement, or the termination of the power purchase agreement, and on each June 1 thereafter through 2021, to assist the transition required by the new, amended, or terminated power purchase agreement. The grant shall be paid by the public utility from funds withheld from the transfer to the renewable development account as provided in paragraphs (b) and (e).

(h) The collective amount paid under the grant contracts awarded under paragraphs (f) and (g) is limited to the amount deposited into the renewable development account, and its predecessor, the renewable development account, established under this section, that was not required to be deposited into the account under Laws 1994, chapter 641, article 1, section 10.

(e) (i) After discontinuation of operation of the Prairie Island nuclear plant or the Monticello nuclear plant and each year spent nuclear fuel is stored in dry cask at the discontinued facility, the commission shall require the public utility to pay \$7,500,000 for the discontinued Prairie Island facility and \$5,250,000 for the discontinued Monticello facility for any year in which the commission finds, by the preponderance of the evidence, that the public utility did not make a good faith effort to remove the spent nuclear fuel stored at the facility to a permanent or interim storage site out of the state. This determination shall be made at least every two years.

(d) (j) Funds in the account may be expended only for any of the following purposes:

~~(1) to increase the market penetration within the state of renewable electric energy resources at reasonable costs;~~

~~(2) to promote the start-up, expansion, and attraction of renewable electric energy projects and companies within the state;~~

~~(3) to stimulate research and development within the state into of renewable electric energy technologies; and~~

~~(4) to develop near-commercial and demonstration scale renewable electric projects or near-commercial and demonstration scale electric infrastructure delivery projects if those delivery projects enhance the delivery of renewable electric energy~~

(2) to encourage grid modernization, including, but not limited to, projects that implement electricity storage, load control, and smart meter technology; and

(3) to stimulate other innovative energy projects that reduce demand and increase system efficiency and flexibility.

Expenditures from the fund must benefit Minnesota ratepayers receiving electric service from utility that owns a nuclear-powered electric generating plant in this state or the Prairie Island Indian community or its members.

The utility that owns a nuclear generating plant is eligible to apply for ~~renewable development account grants~~ under this subdivision.

(k) For the purposes of paragraph (j), the following terms have the meanings given:

(1) "renewable" has the meaning given in section 216B.2422, subdivision 1, paragraph (c) clauses (1), (2), (4), and (5); and

(2) "grid modernization" means:

(i) enhancing the reliability of the electrical grid;

(ii) improving the security of the electrical grid against cyberthreats and physical threats; and

(iii) increasing energy conservation opportunities by facilitating communication between the utility and its customers through the use of two-way meters, control technologies, energy storage and microgrids, technologies to enable demand response, and other innovative technologies.

~~(e) Expenditures authorized by this subdivision from the account may be made only after approval by order of the Public Utilities Commission upon a petition by the public utility. The commission may approve proposed expenditures, may disapprove proposed expenditures that finds to be not in compliance with this subdivision or otherwise not in the public interest, and may, if agreed to by the public utility, modify proposed expenditures. The commission may approve reasonable and necessary expenditures for administering the account in an amount not exceed five percent of expenditures. Commission approval is not required for expenditures required under subdivisions 2 and 3, section 116C.7791, or other law.~~

~~(f) The account shall be managed by the public utility but the public utility must consult about account expenditures with an (l) A renewable development account advisory group that includes, among others, representatives of the public utility and its ratepayers, and includes at least one representative of the Prairie Island Indian community appointed by that community's tribal council, shall develop recommendations on account expenditures. The commission may require that other interests be represented on the advisory group. The advisory group must be consulted with respect to the general scope of expenditures in designing design a request for~~

proposal and ~~in evaluating~~ evaluate projects submitted in response to a request for proposals. ~~In addition to consulting with~~ The advisory group, the public utility must utilize an independent third-party expert to evaluate proposals submitted in response to a request for proposal, including all proposals made by the public utility. A request for proposal for research and development under paragraph ~~(d)~~ (j), clause ~~(3)~~ (1), may be limited to or include a request to higher education institutions located in Minnesota for multiple projects authorized under paragraph ~~(d)~~ (j), clause ~~(3)~~ (1). The request for multiple projects may include a provision that exempts the projects from the third-party expert review and instead provides for project evaluation and selection by a merit peer review grant system. ~~The utility should attempt to reach agreement with the advisory group after consulting with it but the utility has full and sole authority to determine which expenditures shall be submitted to the commission for commission approval.~~ In the process of determining request for proposal scope and subject and in evaluating responses to request for proposals, the ~~public utility~~ advisory group must strongly consider, where reasonable, potential benefit to Minnesota citizens and businesses and the utility's ratepayers.

(m) The advisory group shall submit funding recommendations to the public utility, which has full and sole authority to determine which expenditures shall be submitted by the advisory group to the legislature. The commission may approve proposed expenditures, may disapprove proposed expenditures that it finds not to be in compliance with this subdivision or otherwise not in the public interest, and may, if agreed to by the public utility, modify proposed expenditures. The commission shall, by order, submit its funding recommendations to the legislature as provided under paragraph (n).

~~(g) Funds in~~ (n) The commission shall present its recommended appropriations from the account to the senate and house of representatives committees with jurisdiction over energy policy and finance annually by February 15. Expenditures from the account may not must be directly appropriated by the legislature by a law enacted after January 1, 2012, and unless appropriated by a law enacted prior to that date may be expended only pursuant to an order of the commission according to this subdivision. In enacting appropriations from the account, the legislature:

(1) may approve or disapprove, but may not modify, the amount of an appropriation for a project recommended by the commission; and

(2) may not appropriate money for a project the commission has not recommended funding.

~~(e)~~ (n) A request for proposal for renewable energy generation projects must, when feasible and reasonable, give preference to projects that are most cost-effective for a particular energy source.

~~(f)~~ (o) The ~~public utility~~ advisory group must annually, by February 15, report to the chairs and ranking minority members of the legislative committees with jurisdiction over energy policy on projects funded by the account for the prior year and all previous years. The report must, to the extent possible and reasonable, itemize the actual and projected financial benefit to the public utility's ratepayers of each project.

(p) By February 1, 2018, and each February 1 thereafter, the commissioner of management and budget shall submit a written report regarding the availability of funds in and obligations of the account to the chairs and ranking minority members of the senate and house committees with jurisdiction over energy policy and finance, the public utility, and the advisory group.

(e) (q) A project receiving funds from the account must produce a written final report that includes sufficient detail for technical readers and a clearly written summary for nontechnical readers. The report must include an evaluation of the project's financial, environmental, and other benefits to the state and the public utility's ratepayers.

~~(d)~~ (r) Final reports, any mid-project status reports, and renewable development account financial reports must be posted online on a public Web site designated by the ~~commission~~ commissioner of commerce.

~~(f)~~ (s) All final reports must acknowledge that the project was made possible in whole or part by the Minnesota renewable development ~~fund~~ account, noting that the ~~fund~~ account is financed by the public utility's ratepayers.

(t) Of the amount in the renewable development account, priority must be given to making the payments required under section 216C.417.

EFFECTIVE DATE.

This section is effective the day following final enactment.¹

**CHAPTER 94
ARTICLE 10
ENERGY POLICY**

Section 29. Renewable Development Account, Transfer of Unexpended Grant Funds.

(a) No later than 30 days after the effective date of this section, the utility subject to Minnesota Statutes, section 116C.779, subdivision 1, must notify in writing each person who received a grant funded from the renewable development account previously established under that subdivision:

(1) after January 1, 2012; and

(2) before January 1, 2012, if the funded project remains incomplete as of the effective date of this section.

The notice must contain the provisions of this section and instructions directing grant recipients how unexpended funds can be transferred to the clean energy advancement fund account.

(b) A recipient of a grant from the renewable development account previously established under Minnesota Statutes, section 116C.779, subdivision 1, must, no later than 30 days after receiving the notice required under paragraph (a), transfer any grant funds that remain unexpended as of the effective date of this section to the clean energy advancement fund account if, by that effective date, all of the following conditions are met:

(1) the grant was awarded more than five years before the effective date of this section;

(2) the grant recipient has failed to obtain control of the site on which the project is to be constructed;

(3) the grant recipient has failed to secure all necessary permits or approvals from any unit of government with respect to the project; and

(4) construction of the project has not begun.

(c) A recipient of a grant from the renewable development account previously established under Minnesota Statutes, section 116C.779, subdivision 1, must transfer any grant funds that remain unexpended five years after the grant funds are received by the grant recipient if, by that date, the conditions in paragraph (b), clauses (2) to (4), have been met. The grant recipient must transfer the unexpended funds no later than 30 days after the fifth anniversary of the receipt of the grant funds.

(d) A person who transfers funds to the clean energy advancement fund account under this section is eligible to apply for funding from the clean energy advancement fund account.

EFFECTIVE DATE.

This section is effective the day following final enactment.¹