



**Minneapolis
Park & Recreation Board**

Administrative Offices
2117 West River Road
Minneapolis, MN 55411-2227

Operations Center
3800 Bryant Avenue South
Minneapolis, MN 55409-1000

Phone
612-230-6400
Fax
612-230-6500

www.minneapolisparcs.org

December 5, 2017

Daniel P. Wolf, Executive Secretary
Minnesota Public Utilities Commission
121 Seventh Place East, Suite 350
Saint Paul, MN 55101

RE: 11/22/17 Comments of the Minneapolis Park & Recreation Board
PUC Docket Number: E-002/ M-17-712

Dear Mr. Wolf:

The attached filing is being resubmitted on behalf of the Minneapolis Park and Reaction Board. The original comments sent in November of 2017 were erroneously submitted under the incorrect docket number.

Please accept these comments of the Minneapolis Park and Recreation Board as they relate to Docket Number: E-002/ M-17-712.

Sincerely,

Jayne Miller, Superintendent

CC: Anita Tabb, President

President
Anita Tabb

Vice President
John Erwin

Commissioners
Brad Boum
Meg Forney
Steffanie Musich
Jon C. Olson
Scott Vreeland
Liz Wielinski
M. Annie Young

Superintendent
Jayne Miller

Secretary to the Board
Jennifer B. Ringold

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Nancy Lange	Chair
Dan Lipschultz	Vice Chair
Matt Schuerger	Commissioner
John Tuma	Commissioner
Katie Sieben	Commissioner

In the Matter of the Xcel Energy’s Renewable Development Fund (RDF) Annual report, Tracker Account Tune-up, and Request for 2018 Rider Factor	Docket No. E-002/M-17-712
---	---------------------------

COMMENTS OF THE MINNEAPOLIS PARK AND RECREATION BOARD

The Minneapolis Park and Recreation Board (“MPRB” or “Park Board”) respectfully submits these comments in response to the notice of the Minnesota Public Utilities Commission (“Commission”) issued October 30, 2017, requesting comments in the above-referenced matter.

The Park Board is responding to the following question on the Commission’s notice:

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?

BACKGROUND

The Park Board is an autonomously elected local unit of government within the City of Minneapolis. The Park Board owns and operates the public parks in Minneapolis, including the area surrounding the proposed Crown Hydro site. It has been granted intervenor status with respect to Crown Hydro’s application for a license with the Federal Energy Regulatory Commission (“FERC”).

As has been noted in numerous filings with FERC, the Park Board has serious concerns about the proposed Crown Hydro project. This project was first proposed in 1991, but to date, construction on the project has not been started, much less completed. The company originally proposed locating the project in the privately-owned Crown Roller Mill building. When Crown Hydro could not reach an agreement with the owners of that building, they amended their proposal to move it onto land owned and operated by the MPRB. The Park Board had serious concerns about the project including, but not limited to:

- Water flow and aesthetics of St. Anthony Falls
- Potential impact of discharge channel on river bed
- Property access during construction

- Easement rights
- Cultural resources
- Safety and security
- Geological stability of 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 users

Nonetheless, for many years, the Park Board attempted to work with Crown Hydro to make the project work. The Park Board indicated that it would grant Crown Hydro a lease if its concerns were addressed in a satisfactory manner. Crown was not able to provide the Park Board with proof that its concerns were addressed, and no lease was granted. Subsequently, Crown Hydro made several efforts to get control of the property, including trying to take the Park Board's land through eminent domain and through legislation forcing the Park Board to grant Crown Hydro a lease. These efforts were not successful.

In early 2012, Crown proposed relocating the facility to land located entirely within property owned by the U.S. Army Corps of Engineers ("USACE"). Crown has apparently been negotiating with USACE and other interested parties since then, but has had to revise their plans due to the closure of the St. Anthony Falls lock and dam and other considerations. The Park Board, as well as several other government entities, non-governmental organizations, and members of the public, again raised numerous concerns about the impact the project would have on park land park operations, and the recreating public. Noting a lack of progress being made on the project, FERC issued a Notice of Initiation of Proceeding to Terminate License By Implied Surrender in June of 2012. However, despite the fact that FERC and other federal and state governmental agencies have suggested that a new application is required, FERC has not terminated Crown's license and has continued to allow the company to submit amendment applications for its existing license.

On April 30, 2015, Crown applied for another license amendment. The newest iteration is essentially identical to the 2012 proposal, but it moves the project site about 250 feet north. The powerhouse would now be located adjacent to the top of the parking lot for the lock and dam and would use a new tunnel tailrace as opposed to old existing tunnels. The new tunnel tailrace would be over 900 feet long and would travel under the Stone Arch Bridge. The project is contained entirely within land owned by the USACE, but the Park Board has non-exclusive easements on parts of the property.

PLANNED DEVELOPMENT AND UPCOMING IMPROVEMENTS TO ADJACENT PARK LAND MAY MAKE THE PROJECT INCOMPATIBLE

The current proposed Crown Hydro project site is encompassed by Mill Ruins Park, which is part of the Central Mississippi Riverfront Regional Park. This regional park is the third most popular park in the Minneapolis system and receives over 2.1 million user visits annually. The Park Board also owns and operates several other properties or amenities that will likely fall within the project area. Most notably, the Park Board is currently planning and will soon start developing a new Water Works park development project overlooking St. Anthony Falls and the

Stone Arch Bridge that will bring significant new historic, cultural, and recreational amenities to the most iconic location in Minneapolis and the region. Water Works will incorporate a new park pavilion into the historic ruins of the Bassett and Columbia mills, as well as expand naturalized gathering spaces with direct access to public amenities.

In addition, usage of this area has changed dramatically in the last twenty years. More people are using the river for canoeing and kayaking than when the Crown project was first proposed. Significant investments in park assets have been made by the public in the last few decades, and more than a billion dollars in private investment has occurred in the area. And an investment of more than \$15 million in one park project in immediate proximity to the Crown proposal is planned for the near future.

Crown Hydro has represented that they have not consulted with MPRB staff regarding how the project would fit into the new Water Works Park, anticipated changes to the St. Anthony Lock and Dam through the National Park Services "The Falls" project, and proposed changes to the adjacent Mill Ruins Park. Significant alterations to the proposed project site and lands adjacent are scheduled to begin in the near future. It has not been determined how the construction, maintenance and operation of Crown Hydro's facility will impact surrounding park land given that the company has not yet factored these changes into its plans.

The Park Board also provides or maintains numerous other historical amenities and interpretive services in and around the proposed project site. As such, construction and operation of this facility will directly impact Park Board properties. The Park Board continues to have serious concerns about the impact this project would have on park land and the surrounding community.

PUBLIC UTILITIES COMMISSION AUTHORITY

The Public Utilities Commission ("PUC") has been charged by the Legislature with authority to regulate public electric utilities in the state. Minn. Stat. §216B.01 states:

It is hereby declared to be in the public interest that public utilities be regulated as hereinafter provided in order to provide the retail consumers of natural gas and electric service in this state with adequate and reliable services at reasonable rates, consistent with the financial and economic requirements of public utilities and their need to construct facilities to provide such services or to otherwise obtain energy supplies, to avoid unnecessary duplication of facilities which increase the cost of service to the consumer and to minimize disputes between public utilities which may result in inconvenience or diminish efficiency in service to the consumers....

Further, under Minn. Stat. §216B.03, the PUC is required to ensure that "Every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable."

The PUC is the only body in the state that oversees the rate filings and expenditures of the public utilities. In the matter of Crown Hydro, Xcel Energy has made significant agreements with the company for provision of hydro power. However, in nearly twenty-five years, despite the

expenditure of funds, no electricity has actually been produced, and significant capital has been tied up in a project that is not anywhere near construction, let alone completion. Xcel Energy routinely files rate schedules with the PUC for their review and approval. (See Minn. Stat. §216B.05.) It is the PUC's job to review those rate filings and determine the appropriateness of the costs and charges that Xcel has for its power production. No other body in the state can oversee the complete operations of Xcel. It is incumbent on the PUC to undertake a thorough investigation and make a determination of the use of RDF fund and their commitment to Crown Hydro. As noted below, this project has not come anywhere close to meeting its objectives.

We further call your attention to Minn. Stat. §216B.2422, subd. 2(a), which requires that, "a utility shall file a resource plan with the commission periodically in accordance with rules adopted by the commission. The commission shall approve, reject, or modify the plan of a public utility, as defined in section 216B.02, subdivision 4, consistent with the public interest."

In this matter, all rate filings of Xcel Energy have included a provision for Crown Hydro. Crown Hydro's contract with Xcel is, in essence, dead capital that Xcel has committed to this project for a period of over fifteen years. It is time that the PUC use its oversight and regulatory powers to deny Xcel continuing to make financial commitments to this project until and unless it is demonstrated that progress is being made and construction has begun. In fact, the PUC in this matter should reject the inclusion of any financial commitments by Xcel to Crown Hydro.

The public and rate payers' interests are not served in any way by this project. Ratepayer funds have been committed by Xcel to a project that has not and very likely will not come to fruition. In the meantime, ratepayer assets have remained dormant for years. At a minimum, the PUC should exclude from Xcel's rates any contract it has with Crown Hydro in establishing electric rates.

UNEXPENDED RDF GRANT FUNDS SHOULD BE TRANSFERRED BACK TO THE STATE

The MPRB believes that Crown Hydro, under the requirements of Minnesota Laws 2017, Chapter 94, Article 10, Section 29 ("Section 29"), must transfer the remaining unexpended funds under Crown's RDF Grant AH-01 to the state's clean energy advancement fund.

Crown Hydro was awarded its RDF grant in 2002. The total grant amount was \$5,100,000. To date, \$1,538,591 has been invoiced. \$3,561,409 remains unexpended.

Section 29 requires, in pertinent part, that Xcel notify parties that received an RDF grant prior to January 1, 2012 but whose project is not yet completed. The law further requires that grant recipients "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.”

Xcel notified grant recipients, including Crown Hydro, of these requirements and reported this to the Commission in its regular RDF status report on July 27, 2017. In a letter dated August 16, 2017, Richard Savelkoul, on behalf of Crown Hydro, responded that Crown Hydro was not returning the RDF grant funds for two reasons: “First, qualifying conditions under the 2017 Session Law are not met inasmuch as pursuant to Federal Energy Regulatory Commission determination, construction on the project has begun. Second, all funds forwarded to date by the RDF, were pursuant to the contract terms, providing reimbursement for funds previously spent.”

Crown Hydro does not dispute that (1) the grant was awarded more than five years before the effective date of the law; (2) they have not obtained control of the project site; or (3) that the company has failed to secure necessary permits or approvals from the government. Instead, Crown bases its claim that it does not have to return unexpended funds on the assertion that construction on the project has begun. Although it is not stated in Crown’s August 16, 2017 letter, it appears that the company is basing this claim on a narrow federal definition of when construction begins that includes ordering or purchasing the turbines Crown Hydro intends to use. This argument fails on several counts.

First, FERC has informed Crown Hydro that they do not consider that project construction has begun. In a November 4, 2014 letter from FERC to Thomas Griffin, the Commission states, “The license was issued over 14 years ago and project construction has not begun and there’s nothing before the Commission to act upon.” [Emphasis added.] It is clear that Crown Hydro has not begun any physical activity at the project site. By FERC’s acknowledgement, Crown Hydro had not begun construction as of 2014, and no physical activity has taken place on the project since that time. Further, Crown Hydro’s 2015 license amendment application indicates that construction has not begun. The company’s “Estimated Schedule for Proposed Modifications” states, in part, as follows:

2016 – Goal is to begin construction after all approvals have been obtained and river flow allows. Activities include (not in chronological order):

...

- Construction to begin after all approvals have been obtained and river flows allows [sic].”

(See April 30, 2015 Application for Non-Capacity Related Amendment of License, Exhibit C.) No approvals have been obtained since the filing of this application for license amendment, and no physical construction activity has occurred on site with respect to the project.

Second, and more importantly, Crown Hydro's RDF grant contract clearly states, "Minnesota law shall govern interpretation of this Contract." (See RDF Contract AH-01, section 17 (G).) In this regard, Minnesota laws concerning the definition of "construction" apply, and the federal definition asserted by Crown Hydro is irrelevant.

Crown Hydro has not met any of the definitions of construction under Minnesota law. Minnesota Statutes Chapter 216C governs Energy Planning and Conservation. Minn. Stat. §216C.06, subd. 6 defines construction as "significant physical alteration of a site to install or enlarge a large energy facility, but not including activities incident to preliminary engineering or environmental studies."

Minnesota Statutes Chapter 216E governs Electric Power Facility Permits. According to Minn. Stat. §216E.01, subd. 3, "Construction means any clearing of land, excavation, or other action that would adversely affect the natural environment of the site or route but does not include changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing survey or geological data, including necessary borings to ascertain foundation conditions."

To date, no significant physical alteration of the site has occurred. No land has been cleared. No excavation has taken place. For all intents and purposes, Crown Hydro has not begun construction of the project.

The original RDF grant contract also contains a provision that "Significant changes in the scope of work must be approved by the Xcel Energy in the form of an amendment to this Contract." (See RDF grant contract AH-01, section 5(b).) Crown Hydro has made significant changes to the project since it received the RDF grant. It has twice moved the proposed project location and has made other significant alterations to the project plan. But it is unclear whether or not these changes were ever approved by Xcel as required in the Contract. If Crown Hydro did not present these proposed changes to Xcel and the utility did not subsequently approve of the changes, Crown has not met the terms of the contract.

Crown Hydro's RDF grant has been extended three times, with the third amendment basing the timing of deliverables upon the date of acquisition of the property. The third contract amendment was approved in 2007, but Crown Hydro has still not acquired any property for their project. That third contract amendment also requires that if the property was not acquired by October 21, 2007, Crown was required to file a report detailing acquisition plans and efforts to gain site control. To the best of our knowledge, that report was never filed. If that report was never filed, Crown Hydro has not met the terms of the contract.

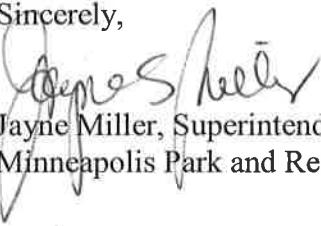
Crown Hydro received the RDF grant more than five years ago but has not obtained site control, has not secured all necessary permits or approvals from any unit of government with respect to the project, and has not begun construction of the project. In fact, they have made no significant physical progress in meeting deliverables or milestones while over \$3,500,000 has been tied up in an account for over fifteen years. This is money that could have been used for its intended purpose of stimulating the development of renewable energy technologies, encouraging grid modernization, and increasing electric system efficiency and flexibility.

It strains credulity to think that the Legislature intended millions of dollars to sit unused in an account for this extended period of time. The RDF is funded with Xcel rate payer money. Xcel rate payers are being harmed by the failure of Crown Hydro to complete their project in a timely fashion. Any unexpended funds should be transferred to the clean energy advancement fund so that those monies can be made available for other renewable energy and efficiency projects.

In sum, the Minneapolis Park and Recreation Board has concerns over whether or not the Crown Hydro project is compatible with regional park use and believes that any unexpended RDF funds the company received or are still encumbered should be returned to the clean energy advancement fund.

If you have any questions regarding these comments, please do not hesitate to contact me.

Sincerely,



Jayne Miller, Superintendent
Minneapolis Park and Recreation Board