

November 30, 2017

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

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

Dear Mr. Wolf:

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

Petition of Northern States Power Company for Approval of the Acquisition of 302.4 MW of Wind Generation.

The petition was filed on September 26, 2017 by:

Bria Shea
Director, Regulatory & Strategic Analysis
Northern States Power Company
401 Nicollet Mall, 401 – 7th Floor
Minneapolis, MN 55401.

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

Sincerely,

/s/ STEPHEN COLLINS
Rates Analyst

SC/lt
Attachment



Before the Minnesota Public Utilities Commission

Comments of the Minnesota Department of Commerce Division of Energy Resources

Docket No. E002/M-17-694

I. INTRODUCTION

On September 26, 2017, Northern States Power Company, doing business as Xcel Energy (Xcel or the Company), filed a petition regarding the 302.4 MW Dakota Range I and II self-build wind projects (collectively, Dakota Range I-II) located in northeastern South Dakota. Xcel's petition requests that the Minnesota Public Utilities Commission (Commission):

1. Allow Xcel to build, own, and operate Dakota Range I-II;
2. Approve an aggregate, symmetrical cap on capital costs for the initial construction of Dakota Range I-II;
3. Approve using Xcel's Capital Services affiliate agreement for Dakota Range I-II; and
4. Confirm that Dakota Range I-II is a reasonable and prudent way for Xcel to continue to meet its obligations under Minnesota's renewable energy standard.

On October 5, 2017, the Commission issued a *Notice of Comment Period* requesting comments on the four requests in Xcel's petition, whether Xcel's petition is consistent with the Commission's *Order Approving Plan with Modifications and Establishing Requirements for Future Resource Plan Filings* issued January 11, 2017 in Docket No. E002/RP-15-21 (15-21 Order) regarding Xcel's most recent integrated resource plan, and any other related issues or concerns.

II. DEPARTMENT ANALYSIS

The first step in the resource-acquisition process is to establish a need for a resource, either due to an external requirement such as a statute or through economic analysis showing that the resource will benefit ratepayers. The Department's analysis in Docket No. E002/RP-15-21, which remains valid due to a lack of change in key factors, concluded that adding at least 2,000

MW of wind to Xcel's system would benefit ratepayers.¹ Since then, Xcel has acquired 1,550 MW of wind, leaving a balance of at least 450 MW that is still beneficial to add. Therefore, there is a need for the generic size, type, and timing represented by the 302.4 MW Dakota Range I-II self-build.

Once a need is established, the next step is to acquire the best project to fill the need. This step requires robust competition. As stated by the Commission:²

The purpose of the competitive process - getting the best overall price for ratepayers - cannot be achieved without robust competition. And robust competition cannot be achieved without two things: (i) a fair, predictable, and transparent competitive process; and (2) widespread agreement that the process is fair, predictable, and transparent.

Potential suppliers will not commit the resources necessary to compete effectively, and will not disclose the sensitive information often required to evaluate their competitive proposals, unless they have confidence in the objectivity, good faith, and predictability of the competitive process. In fact, to attract competitive proposals, it may matter less what the rules are - assuming fundamental rationality and basic fairness - than whether all potential players know the rules and know that they will be enforced evenhandedly.

To ensure a sufficiently competitive process for Xcel's ongoing wind acquisitions, the 15-21 Order requires that Xcel use the "modified Track 2" process if Xcel wants to propose its own projects.³ This process requires that Xcel issue a request for proposals (RFP) for projects from independent power producers (IPPs) and then show that its proposal is worthy of selection in light of the projects proposed by IPPs. To ensure that the comparison to IPP projects is valid and Xcel does not have an unfair advantage, RFP responses must be received *shortly after* Xcel submits a proposal. The modified Track 2 process also requires that Xcel justify its proposal in light of the six factors that the Commission must consider when evaluating a request for a certificate of need exemption under Minn. Stat. § 216B.243, subd. 9.⁴

¹ Department Comments filed July 8, 2016 in Docket No. E002/RP-15-21, page 15, stating "... The Department stopped testing when Strategist was offered 2,000 MW of wind in the early years (1,000 MW in 2018 and another 1,000 MW in 2019) and the model selected all of the wind."

² *Order Establishing Resource Acquisition Process, Establishing Bidding Process under Minn. Stat. § 216B.2422, subd. 5, and Requiring Compliance Filing*, issued May 31, 2006 in Docket No. E002/RP-04-1752, page 6.

³ Specifically, Order Point 5.b. states: "Xcel shall, if Xcel intends to provide a bid for wind generation, acquire wind resources through the modified Track 2 process."

⁴ The six factors are (i) the size of the facility relative to a utility's total need for renewable resources; (ii) alternative approaches for supplying the renewable energy to be supplied by the proposed facility; (iii) the facility's

Pursuant to the 15-21 Order, Xcel followed the modified Track 2 process to select the 750 MW of self-build projects approved in Docket No. E002/M-16-777 (a subset of the total 1,550 MW approved in that docket), as follows:

1. Xcel contacted wind developers about pre-construction wind farms that the Company could buy and then build itself.
2. After reviewing price and non-price criteria for the pre-construction wind-farms, Xcel selected four pre-construction wind farms, with would have an expected cumulative capacity of 750 MW after the wind farms were constructed.
3. Xcel issued an RFP for projects from IPPs.
4. On October 24, 2016, the day before receiving responses to the RFP, Xcel submitted a petition requesting approval of the 750 MW of self-build projects selected in the second step. Xcel justified the selection of the projects by describing the due-diligence process Xcel undertook to select the projects and the 216B.243 subd. 9 factors, including why Xcel selected the projects instead of alternative projects, as required under the second factor (“alternative approaches for supplying the renewable energy to be supplied by the proposed facility”).⁵
5. Xcel evaluated the bids responding to the RFP and selected 800 MW of IPP projects based on price and non-price criteria. Xcel’s selection process was overseen and confirmed appropriate by a third-party auditor, Leidos Engineering LLC.
6. On March 16, 2017, Xcel submitted a supplemental petition in 16-777 requesting approval of the 800 MW of IPP projects selected in the fifth step. Xcel also used the results of the RFP issued in the third step to justify the 750 MW of self-build projects proposed in the fourth step.

In contrast, Xcel did not follow the modified Track 2 process or another sufficiently competitive process to select Dakota Range I-II. Rather, Xcel selected Dakota Range I-II as follows:

ability to promote economic development; (iv) the facility's ability to maintain electric system reliability; (v) impacts on ratepayers; and (vi) other criteria as the Commission may determine are relevant.

⁵ See section V.D on pages 11-12 of Xcel’s October 24, 2016 petition in Docket No. E002/M-16-777. See also page 2 of the petition, stating: “Our Wind Portfolio is comprised of four projects located in Minnesota and North Dakota that we selected after a thorough due diligence process. As a result, these are well-vetted and cost-competitive projects. Like the steps an independent, third-party developer would undertake, we reviewed many aspects of several project sites across our region including location, wind availability, transmission and interconnection considerations, siting issues and more. The four projects ... rose to the top of our list.”

1. Apex Clean Energy (Apex), the developer of Dakota Range I-II, bid Dakota Range I-II in response to the 2016 RFP issued in the third step above, as both a build-own-transfer (BOT) project, under which an IPP builds a project and then transfers ownership to Xcel, and power purchase agreement (PPA), under which an IPP builds a project and then sells the project's output to Xcel under a contract.
2. Xcel rejected the two Dakota Range I-II bids because neither bid scored adequately in the price and non-price criteria used to evaluate bids in the RFP.
3. Apex contacted Xcel shortly after conclusion of the RFP to inform Xcel that Apex wanted to reduce the pricing of their bid. However, the RFP rules did not allow Xcel to allow a bid modification.
4. Xcel selected other IPP projects, as described in the fifth step above, but Xcel and Apex maintained contact.
5. Xcel decided it wanted to buy Dakota Range I-II (not yet in the construction stage) from Apex, because the price and non-price aspects of Dakota Range I-II had improved to Xcel's satisfaction. The purchase and sale agreement (PSA) Xcel intends to use to buy the current Dakota Range I-II assets is included in Xcel's petition as trade-secret Attachment B.
6. Xcel filed the petition in this docket requesting approval of the Dakota Range I-II acquisition and justifying the acquisition by comparing Dakota Range I-II to the projects acquired in Docket No. E002/M-16-777.

Under the process just described, Xcel did not follow the first requirement of the modified Track 2 process, which states that Xcel must justify a self-build proposal in light of the results of an RFP for IPP projects, for which proposals must be received *shortly after* Xcel submits its self-build proposal. Instead, Xcel has attempted to justify Dakota Range I-II in light of the IPP and self-build projects selected in Docket No. E002/M-16-777 and thus the 2016 RFP results, which are now a year old and which Xcel received *before* submitting the Dakota Range I-II proposal. Because Xcel knew this benchmark well in advance of submitting its self-build proposal, the Company could make the cost of Dakota Range I-II as high as possible while still making the proposal seem acceptable.⁶ In addition, the benchmark is no longer adequate because it is a year old and other bidders in the 2016 RFP did not have a reasonable opportunity to update their proposals.

⁶ Indeed, as described on page 2 (second paragraph) of Xcel's petition, the levelized cost of energy (LCOE) of Dakota Range I-II is at the top end of the LCOEs of the projects approved in Docket No. E002/M-16-777.

Xcel has also not complied with the second requirement of the modified Track 2 process, which states that Xcel must justify a self-build proposal in light of all Minn. Stat. § 216B.243, subd. 9 factors, notably the second factor, “alternative approaches for supplying the renewable energy to be supplied by the proposed facility.” Specifically, Xcel has not provided clear evidence that the Company reviewed multiple options in selecting Dakota Range I-II or that Xcel completed the same due diligence the Company completed to select the 750 MW of self-build projects approved in Docket No. E002/M-16-777.

For clarity, the table below summarizes the requirements of the modified Track 2 process for Xcel-proposed projects and Xcel’s compliance with these requirements in its two recent wind acquisitions.

Table 1: Compliance with Requirements of Modified Track 2 Process

Requirement	Satisfied for 16-777 self-builds?	Satisfied for Dakota Range?
Justify Xcel proposal in light of IPP proposals received <i>shortly after</i> Xcel proposal submitted.	Yes. Xcel received IPP proposals <i>a day after</i> submitting it proposal.	No. Xcel received IPP proposals <i>a year before</i> submitting its proposal.
Justify Xcel proposal in light of 216B.243, subd. 9 factors, notably “alternative approaches for supplying the renewable energy to be supplied by the proposed facility.”	Yes. Xcel described due-diligence process undertaken to select the projects and the 216B.243 subd. 9 factors, including why Xcel selected the projects instead of alternative projects.	No. No clear evidence that the Xcel reviewed multiple current options in selecting Dakota Range I-II or completed the same due diligence used to select the 16-777 self-build projects.

Based on the preceding analysis, the Department concludes that Xcel did not use a fair, predictable, and transparent competitive process to select Dakota Range I-II. Given that the Commission has stated (as quoted earlier in these comments) that getting the best project requires widespread agreement that the selection process was competitive, fair, predictable, and transparent, the Commission cannot be assured that Dakota Range I-II is the best project for ratepayers. In addition, approving a self-build project outside the Commission-required modified Track 2 process or another robustly competitive process would put at risk the ability of Xcel, and potentially other utilities, to acquire future resources at least cost. That is, approval of an insufficiently competitive process could, per the second paragraph of the Commission’s statement quoted earlier, cause potential suppliers to lose confidence in the objectivity, good faith, and predictability of the competitive processes used in Minnesota. For these reasons, allowing Xcel to proceed with the acquisition would not be in the public interest.

As the Department concludes that acquiring Dakota Range I-II is not in the public interest, the Department does not review the specific requests in Xcel's petition and simply recommends that the Commission deny Xcel's petition without prejudice. The Department also does not analyze the merits of Dakota Range I-II in terms of the levelized cost of electricity, transmission certainty, and other relevant aspects because, as just discussed, there is no valid benchmark against which to assess the merits and any analysis would have to rely on speculation.

III. DEPARTMENT RECOMMENDATION

The Department recommends that the Commission deny Xcel's petition without prejudice.

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CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce
Comments**

Docket No. E002/M-17-694

Dated this 30th day of November 2017

/s/Sharon Ferguson

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