

## Staff Briefing Papers

**Meeting Date** September 5, 2024

**Agenda Item 1\*\***

**Company** Northen States Power Co. d/b/a Xcel Energy

**Docket No.** IP-6557/WS-06-91

**In the Matter of the Large Wind Energy Conversion System Site Permit for the 98.9 MW Mower County Wind Facility Regarding a Complaint**

- Issues**
1. What, if any, action should the Commission take regarding the complaint from the City of Grand Meadow as first reported in Xcel Energy's Monthly Complaint Report filed on February 15, 2024?
  2. What authority does the Commission have to order removal of the wind turbine blades from the city industrial park?
  3. What contractual remedies does Xcel Energy have with NextEra Energy Resources or others regarding proper disposal and recycling of the turbine blades?

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**✓ Relevant Documents**

Commission Order Approving Amended Site Permit

**Date**  
August 14, 2020

Commission Order Approving Transfer of Permit to Xcel Energy

June 30, 2021

Site Permit Issued to Northern States Power Company

July 21, 2021

Complaint by the City of Grand Meadow Re Storage of Decommissioned Turbine Blades

February 15, 2024

Notice of Comment Period

July 18, 2024

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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**

From July 25 through August 1, 2024 several comments were received from members of the public (citizens of the City of Grand Meadow)

Xcel Energy Comments

Mower County Comments

City of Grand Meadow Comments

LIUNA Reply Comments

**Date**

July 25 – August 1, 2024

July 29, 2024

July 30, 2024

August 1, 2024

August 6, 2024

## I. Statement of the Issues

1. What, if any, action should the Commission take regarding the complaint from the City of Grand Meadow as first reported in Xcel Energy's Monthly Complaint Report filed on February 15, 2024?
2. What authority does the Commission have to order removal of the wind turbine blades from the city industrial park?
3. What contractual remedies does Xcel Energy have with NextEra Energy Resources or others regarding proper disposal and recycling of the turbine blades?

## II. Background

The Mower County Wind Project is a 98.9 megawatt (MW), 43-turbine Large Wind Energy Conversion System (LWECS) located in Mower County, Minnesota. The Project was initially permitted by the Commission on May 26, 2006, with High Prairie Wind Farm I, LLC, as the permittee.

On December 12, 2007, the site permit was transferred to FPL Energy Mower County Wind, LLC, an indirect wholly-owned subsidiary of NextEra Energy Resources (NextEra).

On August 14, 2020, the Commission issued an Order approving FPL Energy Mower County Wind, LLC's request for a site permit amendment for the Mower County Wind Repower Project. The repowering project entailed repowering all 43 existing turbines by installing rotors with longer blades and replacing components within the existing nacelles to increase the overall efficiency of the project.

On June 30, 2021, the Commission issued an Order<sup>1</sup> transferring the Mower County Wind Repower Project site permit from FPL Energy Mower County Wind, LLC to Northern States Power Company d/b/a/ Xcel Energy.

On February 15, 2024, Xcel Energy filed a monthly complaint report identifying a complaint received from the City of Grand Meadow (the City) regarding decommissioned turbine blades that were removed from the Mower County Wind Project during the 2020 repowering project. The City alleges that the blades have been left in an industrial park located within the city limits of Grand Meadow. In November 2020, the owner of the blades, RiverCap LLC, leased the land in the industrial park from a local company indicating the storage would be temporary. Since then, the City alleges, RiverCap has missed deadlines to remove the blades and has become nonresponsive to the City's inquiries.

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<sup>1</sup> On July 21, 2021, the Commission filed the site permit to Northern States Power Company that was not attached to the June 30, 2021 Order due to an inadvertency.

### III. Permit Complaint Handling Procedures, Statutes, and Rules

#### Site Permit Complaint Handling Procedures

Section 9 and Attachment 1 of the Mower County Wind Farm site permit issued to Xcel Energy establish procedures for handling complaints related to the permitted facility. The permittee is expected to undertake good-faith efforts to resolve each complaint informally and make regular reports to the Commission regarding complaints related to the permit. Complaints raising substantial and unresolved permit issues will be investigated by the Commission.

#### 216A.05 Commission Functions and Powers.

Subdivision 1. Legislative and quasi-judicial functions. The functions of the commission shall be legislative and quasi-judicial in nature. It may make such investigations and determinations, hold such hearings, prescribe such rules, and issue such orders with respect to the control and conduct of the businesses coming within its jurisdiction as the legislature itself might make but only as it shall from time to time authorize.

#### 7829.1800 Initial Consideration of Formal Complaint.

Subpart 1. **Initial commission review.** The commission shall review a formal complaint as soon as practicable to determine whether the commission has jurisdiction over the matter and to determine whether there are reasonable grounds to investigate the allegation. On concluding that it lacks jurisdiction or that there is no reasonable basis to investigate the matter, the commission shall dismiss the complaint.

Subp. 2. **Answer.** On concluding that it has jurisdiction over the matter and that investigation is warranted, the commission shall serve the complaint on the respondent, together with an order requiring the respondent to file an answer either stating that it has granted the relief the complainant requests, or responding to the allegations of the complaint. The answer must be filed with the commission and served on the complainant, department, and Office of the Attorney General within 20 days of service of the complaint and order.

#### 7929.1900 Commission Action on Formal Complaint; Comments

Subpart 1. **Nature of proceedings.** The commission shall deal with a formal complaint through a contested case proceeding, informal proceeding, or expedited proceeding.

### IV. Procedural Summary

On August 14, 2020, the Commission issued an Order Approving Site Permit Amendment and Limited Modification to Wind Access Buffer for Certain Turbines.

On June 30, 2021, the Commission issued an Order Granting Site Permit Transfer Request to Xcel Energy.

On February 15, 2024, Xcel Energy filed its monthly complaint report on the Project which identified a complaint received from the City of Grand Meadow regarding decommissioned

turbine blades being stored on an industrial lot within the city.

On July 18, 2024, the Commission issued a Notice of Comment period asking what action the Commission should take regarding the complaint received from the City of Grand Meadow.

On July 29, 2024, Xcel Energy filed comments.

On July 30, 2024, Mower County filed comments.

On August 1, 2024, the City of Grand Meadow filed comments. Individual members of the public also submitted comments between July 25 and August 1.

On August 6, 2024, LIUNA filed reply comments.

## **V. Comments**

### **A. Individual Public Comments**

The Commission received eight individual public comments from the residents of the City of Grand Meadow. All comments received expressed dissatisfaction with the continued storage of the turbine blades on a property not suitable for this purpose. Specific concerns included:

- The property has become a nuisance, attracting wild animals who can pose a safety risk for the residents living near the facility.
- The blades pose a safety hazard for any children who might decide to play there.
- Aesthetic concerns.
- The continued presence of the blades might reduce property values.
- The property where the blades are stored violates the City Zoning Ordinance.
- The owners of the parcel have no incentive to see the blades moved because they receive rent money for allowing the blades to remain on their property.
- The blades have been there for three and a half years and enough time has passed for the blades to be removed.

Commenters argued that Xcel Energy should be responsible for removing the blades because it has assumed ownership of the project and its liabilities.

Finally, Commenters requested that the outcome of this inquiry be published in the local newspaper.

### **B. City of Grand Meadow**

In its comments filed on August 1, 2024 (dated July 25, 2024), the City stated that the turbine blades had become the number one issue that its residents complain about, e.g., “When is something going to be done about those windmill blades”? The issue of stored blades

has been a topic of discussion at nearly every City Council meeting since January 2021. The City interpreted the original site permit dated May 26, 2006, as well as the repowering project permit issued on August 14, 2020 as giving the Commission authority to order the blades removed as a corrective measure. The City identified Section 15: *Revocation or Suspension of Permit* from the August 14, 2020 permit, which reads:

*The Commission may take action to suspend or revoke this permit upon the grounds that:*

- a) a false statement was knowingly made in the application or in accompanying statements or studies required of the Permittee, and a true statement would have warranted a change in the Commission's findings;*
- b) there has been a failure to comply with material conditions of this permit, or there has been a failure to maintain health and safety standards;*
- c) there has been a material violation of a provision of an applicable statute, rule, or an order of the Commission; or*
- d) the Permittee has filed a petition with the Commission requesting that the permit be revoked or terminated.*

*In the event the Commission determines that it is appropriate to consider revocation or suspension of this permit, the Commission shall proceed in accordance with the requirements of Minn. R. 7854.1300 to determine the appropriate action. Upon a finding of any of the above, the Commission may require the Permittee to undertake corrective measures in lieu of having this permit suspended or revoked.*

The City also cited the *Decommissioning and Restoration* section of FPL Energy Mower County Wind's permit application to repower the project from December 2, 2019, which stated in part:

*The Mower equipment supplier will coordinate with the appropriate agencies for responsible recycling of those components. The remaining materials will be reduced to transportable size and removed from the site for disposal. Materials will be disposed in a suitable disposal facility.*

The City indicated this was a condition of the site permit for repowering the project and that, three-and-a-half years later, this condition has not been met yet.

The City stated that the failure of RiverCap (the company that NextEra had contracted with to remove and dispose of the blades) to follow through on its obligations does not absolve turbine manufacturer Siemens Gamesa Renewable Energy (SGRE), NextEra (parent company of FPL Energy Mower County Wind), or Xcel Energy (current owner of the project) of their responsibility to properly dispose of the waste generated from the project construction, including the blades. The City asserted that it has been told numerous times by Xcel and RiverCap's subsidiary Canvas that the blades would be removed by a certain date, and every

deadline has passed with no action. According to the City, Xcel Energy has indicated that Canvus will have the blades removed by year's end, but a Canvus representative informed the City that it lacks the resources to move the blades.

The City argued that when Xcel Energy acquired the Mower County Wind Farm, it acquired not only the assets—including the generation facilities, interconnection rights, and Large Generator Interconnection Agreement (LGIA)—but it also acquired the liabilities associated with this facility.

Finally, the City urged the Commission and the energy industry to take this issue very seriously because, as more “repowering” of wind farms occurs, the amount of industrial waste will continue to increase. The City argued that energy companies need to be held accountable for the disposal of their industrial waste, just as companies in other industries would be.

### **C. Mower County Comments**

In comments dated July 29, 2024, Mower County expressed support for the City of Grand Meadow in its efforts to remove the blades. According to the County, the blades were stored without a proper permit by the local government unit.

Mower County indicated that since 2020, it has required that any decommissioned blades be removed from the County as part of any repowering project. For example, this requirement was accomplished by Agreement between Mower County and Northern States Power Company for the 2022 Grand Meadow Wind Repower Project. The blades from that Project were removed from the site and properly disposed of, not left on a leased site to create an eyesore.

It is the County's position that decommissioning of the blades is required as part of the permit issued by the Commission. Decommissioning does not mean storing the blades until it is economical to recycle, dispose, or reuse them. The County argued that a permit-holding entity must have measures in place to properly decommission the project and should be held to that standard.

### **D. Xcel Energy Comments**

Xcel Energy stated that Mower County Wind Farm (Mower) was repowered by the prior owner, NextEra,<sup>2</sup> which contracted with Siemens Gamesa Renewable Energy to provide repower equipment and services (including removal of used blades) associated with the project. Under the terms of its agreement with NextEra, SGRE took title to the blades and subsequently contracted with RiverCap, now Canvus, to recycle the blades. Arrangements for blade disposal and transfer of title occurred prior to Xcel Energy's purchase of the repowered wind farm.

Xcel Energy does not have title to the blades, but it is Xcel Energy's understanding that SGRE

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<sup>2</sup> The prior owner was FPL Energy Mower County Wind, LLC, an indirect wholly-owned subsidiary of NextEra.

paid Canvus the full fee to recycle the Mower blades in 2021. The 111 Mower blades were moved to a storage area leased through RiverCap/Canvus, but Xcel Energy does not know how many blades are currently at this storage location. Xcel Energy's understanding is that the storage lease expires on December 31, 2024. After communicating with NextEra and SGRE regarding current responsibility and next steps, Xcel Energy believes that Canvus is free to move the blades without any additional coordination required with SGRE or NextEra. Canvus has also notified SGRE that it does not have room at its Ohio facility to accept any additional blades at this time. Canvus has stated, however, that the blades will be moved by year's end.

Xcel Energy believes this is an isolated situation and not reflective of other efforts to repower or decommission wind farms. While Xcel Energy was not the permittee on the Mower County project when it was repowered, Xcel Energy indicated that for two other facilities it has repowered—Nobles and Grand Meadow—did not have this problem. In those cases, the repowered blades were successfully removed from the project site and disposed of without further incident or complaint. Regardless, Xcel Energy indicated it takes the concerns expressed in the complaint seriously and is considering measures to avoid this issue in the future.

Responding specifically to the three questions from the Commission Notice of Comment Period, Xcel Energy provided, in part, that:

1. The concerns expressed in the complaint fall beyond the Commission's jurisdiction and, based on the representations of Canvus, that the issue will be resolved by the end of the year when Canvus's storage lease expires. Xcel Energy believes that the Commission's permit requirements related to removal of the turbine blades from the project site have been fulfilled by NextEra. Xcel Energy asserted that the blades have been sold to Canvus and are not within the Commission's jurisdiction, and that Canvus has entered into a private lease to store the blades until it moves them to its facility sometime later this year.
2. Xcel Energy indicated that it does not have title to the wind turbine blades and therefore would not be impacted by a Commission determination that it had authority over the blades. Regardless, Xcel Energy's view is that the Commission does not have authority over these turbine blades because they are no longer part of the project and have been removed from the project consistent with the project's permits, Commission orders, and permittee commitments.
3. Xcel Energy's contract with NextEra and NextEra's repower agreement with SGRE provide that the existing wind turbine equipment (other than the towers, which were retained and used in the repower) would be disassembled and removed from the project site and these actions have taken place. Accordingly, the Xcel Energy does not have contractual remedies because the terms of its contracts were satisfied. Further, Xcel Energy understands that the blades were ultimately sold to Canvus.

To learn from this incident, Xcel Energy indicated it is open to discussion and guidance on



improvements that can be made in future matters to avoid the issues presented in this complaint. Xcel Energy noted that there are inherent limitations in the Commission's authority and in Xcel Energy's contractual ability to regulate how these assets are stored and processed after they have been sold. Despite these limitations, in light of this experience, Xcel Energy will consider whether future repower or blade recycling contracts should include more specific obligations regarding the treatment and removal of equipment, such as deadlines for completing the recycling.

As for a path forward, Xcel Energy believes the best resolution to this complaint is for Canvus to move the blades by year's end when its storage lease expires. Xcel Energy also agrees with the general principle that the City must be able to enforce its laws and zoning ordinances. Finally, Xcel Energy noted that SGRE may have some path to resolution based on its underlying contract with Canvus, but it indicated that Xcel Energy is not a party to these agreements.

Xcel Energy provided a schedule to remove the wind turbine blades, based on its conversations with NextEra and Siemens Gamesa:

- On or before September 1, 2024, Canvus (formerly known as RiverCap), the current owner of the wind turbine blades, will apply for the necessarily transportation and removal permits.
- On or before October 1, 2024, Canvus will commence loading and removal of the wind turbine blades.
- On or before December 15, 2024, all wind turbine blades will be removed.

Lastly, Xcel Energy indicated that if at any time Canvus does not perform one of the above milestones, NextEra will step in to ensure that the wind turbine blades are removed by December 31, 2024.

#### **E. LIUNA Comments**

LIUNA acknowledged that the Commission has few tools available to it for addressing the issue of the disposal of the turbine blades in the City of Grand Meadow. LIUNA argued that it is important for the Commission to identify what went wrong, who is responsible, and identify how such issues can be avoided in the future. LIUNA recommended the Commission find that:

- Permits bind the owner of the facility, not its suppliers and subcontractors
- A permittee's obligations are not discharged or diminished through subcontracting
- Legislation and/or Commission permit conditions may be needed to ensure proper and timely disposal of blades and other major components going forward
- Next Era's actions are the cause of the problem, and their current conduct does not meet the spirit of the permit requirements
- The current problem results, in part, from the reliance on third-party owners. The

Commission needs to consider the risks associated with the loss of regulatory-leverage over third party developers in its permitting requirements.

## VI. Staff Analysis

Staff has reviewed the comments submitted into the record, including the most recent Commission Order issuing the revised site permit, and the order approving the permit transfer to Xcel Energy.

Staff suggests that in order to establish whether the Commission has jurisdiction over this matter, the Commission should first make a determination that the requirement for disposal of the blades in the repowering permit has not been satisfied in some way. If the disposal requirement has not been satisfied, then the requirement was transferred with the permit and must be met by the current permittee. If the Commission determines that the blade disposal requirement has not been satisfied, the Commission can then decide what action to order.

Staff notes the proposed timeline to remove the blades as provided by Xcel Energy includes some concrete and imminent dates, including the September 1, 2024 date by which Canvas is to apply for the necessary removal and transportation permits, followed by an October 1, 2024, date to begin loading and removal of the blades which should be completed by December 15, 2024. The Commission may wish to delay taking action on the complaint to allow time for the steps outlined in Xcel Energy's response to show progress and to see if a complete and final resolution is achieved by the end of the current year (**decision option 3**).

Alternatively, the Commission may choose to initiate the formal complaint review process at this time even while the steps described above are taken. The complaint review process could be stopped and closed after the last turbine blade has been removed from the temporary storage facility and all the City and County removal and remediation requirements have been addressed.

Staff notes that under the formal complaint process of Minn. R. 7829.1800 and 7829.1900, the next steps would be for the Commission to either find that there are no reasonable grounds to investigate the allegation and therefore dismiss the complaint (**decision option 4**), or initiate further proceedings by requiring Xcel to file and serve an answer to the complaint and requesting initial and reply comments (**decision options 5 and 6**). Per Minn. R. 7829.1900, subp. 5, commenters are to include a procedural recommendation as to whether the matter requires a contested case, informal notice and comment, or expedited proceeding. The rules thus contemplate further investigation occurring after the Commission decides which procedure to follow based on the next round of comments.

Alternatively, the Commission could grant a variance to the formal complaint process rules and resolve the complaint on the merits at this time (**decision options 7 and either 8 or 9**). Under Minn. R. 7829.3200, subp. 1, the Commission will grant a variance to its rules when the following requirements are met:

- A. Enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- B. Granting the variance would not adversely affect the public interest; and
- C. Granting the variance would not conflict with standards imposed by law.

Staff notes that the Commission has already issued a notice of comment period and received comments from Xcel, the affected city and county, and multiple members of the public regarding the merits of the complaint. No party or commenter requested further record development; they seemed to agree there is sufficient information in the record for the Commission to resolve the matter without further process. Additionally, the local governments and residents who commented in support of the complaint seemed to prefer removal of the blades as soon as possible.

These facts may weigh in favor of varying the procedural rules so the Commission may decide the merits now under the first two variance factors listed above. Delaying resolution to hold additional comment periods on process before reaching the merits could burden those affected, and the public, with a delayed resolution; and the Commission may find this burden excessive because the parties and commenters appear to see further process as unnecessary. However, Commissioners may wish to confirm with the parties at the agenda meeting whether they believe further process is warranted.

## VII. Decision Options

### Jurisdiction

1. Find that the Commission has jurisdiction over this matter. (City, County)

*Or*

2. Find that the Commission does not have jurisdiction over this matter, and dismiss the complaint. (Xcel Energy)

*If the Commission finds it has jurisdiction (decision option 1), it may consider the following decision options to delay the proceeding (option 3), follow the formal complaint process under Minn. R. ch. 7829 (4 or 5–6), or vary the formal complaint process rules and resolve the complaint on the merits at this time (7 and either 8 or 9). The Commission may also consider the additional findings requested by LIUNA (10–11).*

### Delay Proceeding

3. Delay taking any action on the complaint until after December 15, 2024. If the blades are not removed by that date, the City may make a filing in this docket requesting further Commission review.

*Or*

### Formal Complaint Procedures

4. Find that there is no reasonable basis to investigate the matter, and dismiss the complaint.

*Or*

5. Require Xcel to file and serve an answer to the complaint within 20 days of the order consistent with Minn. R. 7829.1800.

*And (if 5 is selected, 6 should also be selected)*

6. Open a formal investigation into the City of Grand Meadow's complaint. Pursuant to Minn. R. 7829.1900, require that initial comments, including a procedural recommendation, shall be filed within 30 days of the order, and any reply comments shall be filed and served within 10 days of expiration of the initial comment period.

**Variance and Resolution on the Merits**

7. Find that the variance factors of Minn. R. 7829.3200 are met, and grant a variance to the procedural requirements of Minn. R. 7829.1800 and 7829.1900 so that the Commission may decide the matter on the merits at this time.

*And (if 7 is selected, either 8 or 9 should also be selected)*

8. Direct Xcel Energy to remove the blades immediately. (City, County)

*Or*

9. Dismiss the complaint on the merits. (Xcel Energy)

**Additional Findings**

10. Identify NextEra's actions as the cause of the problem underlying the complaint. (LIUNA)
11. Clarify that the Mower County Wind Farm site permit does not bind the facility's customers, equipment suppliers, or subcontractors, but rather the facility's owner named in the permit. (LIUNA)

Staff does not have a recommendation for a decision option.