

April 8, 2020

**PUBLIC DOCUMENT**

Mr. Will Seuffert  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place East, Suite 350  
Saint Paul, Minnesota 55101-2147

RE: **PUBLIC Supplemental Comments of the Minnesota Department of Commerce, Division of Energy Resources**  
Docket No. E002/PA-19-553

Dear Mr. Seuffert:

Attached are the **PUBLIC** Supplemental Comments of the Minnesota Department of Commerce, Division of Energy Resources (Department), in the following matter:

Approval of the Acquisition of the Mower County Wind Facility.

The Petition was filed on August 30, 2019 by:

Bria E. Shea  
Director, Regulatory and Strategic Analysis  
Xcel Energy  
414 Nicollet Mall – 401m 7<sup>th</sup> Floor  
Minneapolis, MN 55401

The Department recommends that the Minnesota Public Utilities Commission (Commission) **approve the Purchased Power Agreement alternative**. If the Commission doesn't agree with this recommendation, then the Department recommends that the Commission **approve the Regulated Purchase Acquisition alternative with conditions**. The Department is available to answer any questions that the Commission may have in this matter.

Sincerely,

/s/ STEVE RAKOW  
Analyst Coordinator

/S/JOHN KUNDERT  
Financial Analyst

JK/ar  
Attachment



## Before the Minnesota Public Utilities Commission

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

Docket No. Docket No. E002/PA-19-553

#### I. INTRODUCTION

On August 30, 2019 Xcel Energy (Xcel, Company) filed a petition requesting approval to purchase the Mower County Wind Facility (Mower County or Project) as a regulated asset (Purchase, Regulated Purchase Asset or RPA). The Company also submitted second preferred alternative – amending the existing power purchase agreement alternative. Under this alternative, Xcel would purchase the Project as an unregulated Xcel asset and then step in as the counter-party in the existing renewable energy power purchase agreement (REPA).

The Company claimed four benefits associated with its preferred Purchase alternative:

1. Cost savings related to purchasing/selling energy on the spot market of the Midcontinent Independent System Operator (MISO);
2. Purchase/ownership of the facility's existing transmission access;
3. Current Owner/Developer's expressed preference for union labor; and
4. Assistance in Xcel achieving its carbon reduction goals.

On December 13, 2019, the Minnesota Department of Commerce, Division of Energy Resources, (Department) filed its Comments. The Department recommended that the Minnesota Public Utilities Commission (Commission) approve the REPA. The basis for this recommendation rested upon the following factors. The REPA:

1. Demonstrated financial benefits for ratepayers in every scenario modeled,
2. Eliminated the risk of technological obsolescence associated with the vendor's choice of 2017 vintage wind turbines for ratepayers, and
3. Eliminated operational and financial risks associated with ownership for ratepayers.

Since Xcel's ratepayers with the fewest financial resources could face a higher energy burden under the proposed purchase over the Project's life, we did not support Xcel's Regulated Purchase alternative.

Further, our review of Xcel's Strategist modeling that supported the RPA identified some inconsistencies. A reasonable scenario in Xcel's Pro Forma model that did not provide financial benefits to ratepayers also created some doubt as to the likelihood of ratepayer benefits actually being realized. The scenario in question assumed the extension of the On-shore Wind Production Tax Credit until 2027. The Strategist modeling shortcomings and the results of the Wind PTC extension scenario provided the support for our recommendation.

The Department also asked that the Company provide additional information regarding the avoided costs and benefits associated with the RPA Project's transmission access, the developer's use of union labor and benefits associated with reduced carbon emissions.

On January 31, 2020 Xcel filed Reply Comments. Xcel mentioned in those Reply Comments that it had worked with Department staff to revise its Strategist modeling and believed that all the Strategist-related issues had been resolved to the Department's satisfactions relative to the RPA. Regarding the Wind PTC extension scenario, Xcel stated that its modeling assumptions are consistent with current law. The Company also referenced earlier Commission decisions that it maintains supports its position that the Purchase should be approved. The Company also noted that it provided additional information in its Reply Comments regarding potential avoided transmission costs associated with the Purchase, the use of union labor on the Project and potential reduced carbon emissions.

## II. COMPARATIVE ANALYSIS

Xcel and the Department have done a fair amount of analysis in this proceeding to date. The Department provides the following analysis that compares the RPA and REPA using a lease-versus-buy construct from a ratepayer perspective to provide context for considering the various issues identified to date in a consistent manner. The Purchase would be considered the buy option, while the REPA would be considered as the lease option.

### A. REPA (LEASE) VS. REGULATED PURCHASE OPTION (BUY)

A review of financial literature and review of Commission dockets pertaining to decommissioning of wind facilities identified the following advantages to leasing:<sup>1</sup>

- Balanced Cash Outflow;
- Quality Assets;
- Better Usage of Capital;
- Tax Benefit;
- Off-Balance Sheet Debt;
- Better Planning;
- Low Capital Expenditure;
- No Risk of Obsolescence;
- No Risk of Decommissioning Costs;
- Termination Rights.

From a ratepayer perspective, the most important benefits of those listed are the "no risk of obsolescence" and "termination rights." The Department's concern about "wind generation technology risk" identified in our December 13, 2019 Comments could be reframed as obsolescence

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<sup>1</sup> [www.efinancemanagement.com](http://www.efinancemanagement.com)

risk. The use of 2017-vintage turbines, which Xcel assumes will be operational until 2045, is the basis for the Department's concern. We assume that wind generation technology will continue to improve and costs will continue to decline during the eight years between the technology that Xcel is currently proposing and the technology that will be available once the existing PPA expires in 2026.<sup>2</sup> While Xcel stated in its Reply Comments that it has attempted to incorporate this information in the forecasted wind generation costs that it assumes in its models, it is difficult to know how quickly wind generation technology costs will decline and hence difficult to verify Xcel's assumptions.

The same article noted in the above footnote listed the following disadvantages associated with leasing:

- Lease Expenses;
- Limited Financial Benefits;
- Reduced Return for Equity Holders;
- Debt due to ongoing obligations to pay under the lease;
- Limited Access of Other Loans;
- Processing and Documentation;
- No Ownership;
- Whether the Owner Adequately Maintains the Asset;
- Limited Tax Benefit.

Again, from a ratepayer perspective, as discussed further below, two of the disadvantages associated with leasing (REPA) identified are relevant - no ownership and adequate maintenance of the asset.

*1. No ownership*

Xcel maintains that one of the key advantages of the RPA is the ownership of the wind generation facilities. The Company has developed a number of scenarios that demonstrate that the acquisition would provide millions of dollars of benefits to ratepayers. As noted in our previous comments, those forecasted ratepayer benefits are dependent on the expiration of the Federal Wind Production Tax Credit (WPTC or Wind PTC) at the end of 2020. If the WPTC is extended beyond the expiration date of the current PPA in 2026, ratepayers would receive no financial benefit from the acquisition. Rather, the RPA would impose a cost of \$4.9 million.<sup>3</sup>

Xcel quibbled with but ultimately did not dispute this analysis in its Reply Comments, stating:

The Company disagrees with this conclusion for two reasons. First, the analysis provided by the Company assumed that 100 percent of the PTC would be credited to the project commencing at the end of 2026.

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<sup>2</sup> Assumes installation of 2025 vintage technology.

<sup>3</sup> Department Comments dated December 13, 2019 at page 18 and in Xcel's Reply Comments at page 9.

Therefore, even if the PTC were extended in “some form” the acquisition of Mower could still result in significant benefits to customers, given the level of customer benefits indicated in the original and subsequent analysis.<sup>4</sup>

Xcel recognized that the level and duration of the WPTC does determine whether ratepayers benefit or are financially penalized from Xcel’s purchase of the Mower project. The Department noted in its Comments that the Wind PTC has been repeatedly extended and that it was our opinion that the On-shore Wind PTC’s December 31, 2019 expiration date could be extended. We filed our comments on December 13, 2019.

Our prediction was correct. On December 17, 2019 the US House of Representatives passed legislation that extended the on-shore wind PTC for an additional year.<sup>5, 6</sup> The US Senate passed the bill on December 18, 2019 and President Trump signed the bill shortly thereafter. The Department cites this legislation as another example of the Federal government’s ongoing support for renewable electric generation, especially wind power.<sup>7</sup>

The Department is optimistic that the Federal government will continue to provide incentives for wind generation and that the supposed “disadvantage” associated with the REPA is actually an advantage or at worst, neutral, compared to the purchase alternative.

Xcel identified another benefit associated with ownership of the facility, namely that it would own the site’s existing transmission access. According to the Company, this access would be considered relatively low-cost when compared to forecasted transmission access costs to future green-field wind facilities. The Company estimated the benefits of this transmission access to be between \$40 and \$200 million in its Reply Comments.

The Department notes that Xcel didn’t attempt to quantify those transmission benefits until its Reply Comments, at the Department’s request. While that cost estimate might be considered a reasonable first attempt, it has not been vetted. Xcel’s presentation and wide range of benefits suggests that the Company is not as certain as to those benefits; nor is it clear whether any such benefits would exist in the future, after additional transmission and distribution facilities are built.

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<sup>4</sup> Xcel Reply Comments at page 10.

<sup>5</sup> Interestingly enough, the legislation increased the Wind PTC for projects starting in 2020 to 60 percent of the WPTC. It had been 40 percent for projects initiating construction in 2019. While Mower would not qualify for those changes, the fact that Congress extended the WPTC and increased its value for wind projects coming on-line in 2020 indicates a continued interest in the WPTC in Congress.

<sup>6</sup> See Attachments A and B.

<sup>7</sup> Perhaps the most telling statement regarding these federal renewable incentives in general is contained in Attachment B – “Most of the credits will now expire at the end of 2020, setting up the prospect of a broader tax extender deal during lame duck session after the 2020 election.” Neither article mentioned the possibility of the renewable credits “not” being extended.

Hence, the Department recommends that the Commission discount the benefits Xcel has identified associated with the existing transmission access. The Department also notes that under the REPA, Xcel's unregulated subsidiary would still own the transmission access to the site. This shareholder ownership option could provide the Commission with some leverage for acquiring the transmission access for ratepayers at some time in the future if the regulated company's costs of transmission access increase significantly.

## *2. Adequate maintenance*

The second disadvantage of the lease/buy framework with the REPA is maintenance. This topic may be a reference to facility's reliability given that it is owned by a third-party in a generic lease-versus-buy analysis. However, this particular risk may not be salient here. Xcel's ownership through its third party unregulated generation subsidiary is expected to ensure that the Project is managed by a responsible locally base counterparty as opposed to a distant and uncaring third-party.

### *B. SOCIETAL COSTS AND BENEFITS*

Xcel also noted in its Reply Comments that the RPA would provide societal benefits by supporting union labor and lowering Xcel carbon emissions. The Department asked for clarification on the union labor issue in Department Information Request No. 19:

Is Xcel willing to agree to a condition related to the purchase agreement that requires Seller to sign a Project Labor Agreement (PLA) for Mower County while keeping the currently agreed purchase price unchanged?

Xcel stated the following in response:

As the Company discussed in its January 31, 2020 Reply Comments, and consistent with the Company's preference for union labor, Seller executed an Engineering, Procurement and Construction (EPC) contract with White Construction, Inc. (White), which is an EPC provider known in the industry to use union labor.

In response to this request, the Company reached out to White to inquire about its efforts to secure local union labor for the Mower repowering project (Project). Through those conversations we obtained additional assurances from White that its current scope of work for the Project is comprised exclusively of union labor and that, since being appointed as the EPC provider, it has taken the necessary steps to staff the Project with union labor. Specifically, White reached out to the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers (Iron Workers), Laborers' International Union of North America (LIUNA), International Union of Operating Engineers (Operators) and the International Brotherhood of Electrical Workers (IBEW) regarding staffing

the project pursuant to its national Wind Turbine Agreement with these unions.

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Since then, White has been in regular contact with the international unions and local union halls to facilitate the hiring of local union workers for the Project. White also noted that it would be holding pre-construction meetings regarding the Project in all local union halls.

As a result of White's contractual commitments related to the Project under the Wind Turbine Agreement, and the efforts White has taken to secure union labor pursuant to that agreement, we are confident that local union labor will be used for the Project. We will continue to monitor the Mower repowering including the use of union labor, and we could provide an update to the Commission as the Project progresses.

Xcel also included this general Wind Turbine Agreement between White and the Iron Workers, LIUNA, Operators and IBEW, along with letters from the heads of those four unions approving the use of union labor on the Project. Attachment C includes the Company's response.

The information provided supports Xcel's contention that union labor is expected to be used on the Project. Further, since the use of union labor doesn't appear to be tied to the RPA, there appears to be nothing to suggest that the REPA option would not also use union labor. That option would allow protection of both the societal benefit of using union labor and ratepayers' financial interests. If Xcel's unregulated affiliate would not use union labor in a Project Labor Agreement or similar approach, the Company should so indicate to the Commission.

Carbon emissions reduction is the second societal benefit that Xcel identified. It appears to the Department that once Mower County is repowered, ownership, at least from a societal perspective is not that important. Society as a whole will benefit from the addition of the additional renewable energy that has zero incremental cost the facility produces relative to the existing facility. Which entity "claims" the benefit of those additional carbon-free megawatt hours (e.g. Xcel or Great River Energy or whomever) is merely a book-keeping question. The fact remains that the existing stock of electric generation will be able to produce incrementally more wind energy and thereby emit fewer emissions to serve the same load once the Project is repowered.<sup>8</sup>

All of the analysis above points to the conclusion that the societal benefits are no greater under the purchase option compared to REPA. Instead, the REPA option is expected to provide the same societal benefits (e.g. union labor, emissions reductions) and avoid potential additional costs associated with that same purchase option.

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<sup>8</sup> The Commission touched on this issue in its deliberations on the Jeffers/Community Wind North purchase acquisition, Docket No. E002/PA-18-777.

### C. PURCHASE OPTION – PROPOSED CONDITIONS

If however, the Commission believes there is a sufficient amount of ratepayer benefits to justify the approval of the regulated purchase alternative, the Department recommends the following conditions.

- Annual Capacity factor – If the facility’s annual capacity factor is lower than Xcel forecasted, shareholders will be responsible for the replacement power expense associated with that shortfall. This information is included in **TRADE SECRET** Attachment D.<sup>9</sup>
- Operations and Maintenance (O&M) Expense – The amount of this expense that may be charged to ratepayers is capped at Xcel’s forecasted annual cost included in **TRADE SECRET** Attachment D. While ratepayers would benefit from lower O&M expenses, shareholders would be responsible for any O&M costs in excess of those annual amounts.<sup>10</sup>
- Land Lease expense – Similar to O&M expense above, recovery of this expense from ratepayers is capped at Xcel’s forecasted annual cost included in **TRADE SECRET** Attachment D. Ratepayers would benefit from any lower costs, but shareholders would be responsible for any land lease expense in excess of those annual amounts.
- Insurance expense – The amount of this expense that can be charged to ratepayers is capped at Xcel’s forecasted annual cost included in **TRADE SECRET** Attachment D. Ratepayers would benefit from any lower costs and shareholders would be responsible for any insurance expense in excess of those annual amounts.
- Property/production tax expense – Recovery of this expense from ratepayers is capped at Xcel’s forecasted annual cost included in **TRADE SECRET** Attachment D. Shareholders are responsible for any tax expense in excess of those annual amounts.
- Production tax credit – Xcel must credit to its ratepayers 100 percent of any extension of the WPTC, consistent with Xcel’s description above of its analysis and treatment of WPTCs for other wind facilities that the Company owns (e.g. Grand Meadows).
- Unrecorded depreciation – Xcel must reduce the net book value (and corresponding purchase price) to reflect unrecorded depreciation from June, 2019 onward, to reduce costs for ratepayers and avoid overstating the net book value of the Mower County facility.

This list of conditions attempts to protect ratepayers from significant variances from Xcel’s forecasted to actual values.

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<sup>9</sup> Xcel provided its forecasted annual capacity factor for the Project in the information it provided for the Strategist model. That information is included as **TRADE SECRET** Attachment D.

<sup>10</sup> The Company also provided its forecasted expenses for Mower in its response to Department Information request no. 20. **TRADE SECRET** Attachment D also summarizes this information.



#### D. OTHER ISSUES

The Department's December 13, 2019 Comments addressed five different topics:

- Legal and procedural issues;
- Accounting issues related to the RPA;
- Cost recovery issues for both alternatives;
- Strategist modeling for both alternatives; and
- Purchase option additional information.

The Department concluded that the legal/procedural and cost recovery issues identified in this proceeding were resolved in our initial Comments. The accounting issues we identified only apply to the Purchase alternative; the last condition listed above would address that issue; we have included an updated discussion on that topic in Attachment E. The upshot of that analysis is that if the Commission determines that the RPA provides adequate ratepayer benefits, then the Department's concerns regarding the acquisition premium and starting point for the regulated assets starting depreciation would be addressed by the above conditions. Attachment F contains our discussion of Xcel and the Department's efforts to resolve the various Strategist issues we had identified. All of the Strategist-related issues related to the original modeling assumptions were resolved.

### III. RECOMMENDATIONS

The Department recommends that the Commission approve Xcel's proposed Amended PPA (REPA alternative). This alternative provides ratepayer benefits in every scenario modeled and mitigates the obsolescence risk associated with the 2017 vintage turbines that Xcel is proposing to purchase.

If the Commission believes that sufficient ratepayer benefits exist to approve the Company's request to the Purchase of the Mower County Wind Generation facility, under Minnesota Statutes § 216B.50 as a regulated asset, the Department recommends that the Commission condition that approval with the following conditions.

- Annual Capacity factor – if the facility's annual capacity factor is lower than Xcel forecasted, shareholders will be responsible for the replacement power expense associated with that shortfall. This information is included in **TRADE SECRET** Attachment D.
- O&M Expense – The amount of this expense that may be charged to ratepayers is capped at Xcel's forecasted annual cost included in **TRADE SECRET** Attachment D. While ratepayers would benefit from lower O&M expenses, shareholders would be responsible for any O&M costs in excess of those annual amounts
- Land Lease expense – The amount of this expense that may be charged to ratepayers is capped at Xcel's forecasted annual cost included in **TRADE SECRET** Attachment D. While ratepayers would benefit from lower land lease expenses,

shareholders would be responsible for any such costs in excess of those annual amounts.

- Insurance expense – The amount of this expense that may be charged to ratepayers is capped at Xcel’s forecasted annual cost included in **TRADE SECRET** Attachment D. While ratepayers would benefit from insurance expenses, shareholders would be responsible for any such costs in excess of those annual amounts.
- Property/production tax expense – The amount of this expense that may be charged to ratepayers is capped at Xcel’s forecasted annual cost included in **TRADE SECRET** Attachment D. While ratepayers would benefit from tax costs, shareholders would be responsible for any such costs in excess of those annual amounts.
- Production tax credit – Xcel must credit to its ratepayers 100 percent of any extension of the WPTC, consistent with Xcel’s description above of its analysis of the WPTC and its treatment of other wind generation.
- Unrecorded depreciation – Xcel must reduce the net book value (and corresponding purchase price) to reflect unrecorded depreciation from June 2019 onward, to reduce costs for ratepayers and avoid overstating the net book value of the Mower County facility.

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# ENERGY BUSINESS LAW

Insights for the Global Energy Industry

## House Passes PTC, NMTC Extension Bill

By Heather Cooper & Philip Tingle on December 18, 2019

On December 17, 2019, the US House of Representatives passed a year-end fiscal year 2020 spending bill for the federal government that includes a one-year extension of the production tax credit under Section 45 (PTC) for wind and other technologies. The bill would extend the wind PTC for facilities the construction of which begins during 2020 at a rate of 60%. Under current law, the PTC is available at a rate of 100% for wind projects construction of which began before 2017, and the PTC phases down to 80% for projects that began construction during 2017, to 60% for projects that began construction during 2018, and 40% for projects that began construction during 2019. Curiously, the extender bill would leave in place the 40% rate for projects that began construction during 2019 and increase the rate back to 60% for projects that begin construction in 2020. If enacted in this form, this could potentially leave taxpayers in a frustrating position to the extent they already took steps to begin construction on a wind project in 2019 in order to secure PTC-eligibility at the 40% rate in anticipation of the credit's scheduled expiration next year. The bill would mirror this 60-40-60 pattern for wind projects that elect to take the investment tax credit under Section 48 (ITC) in lieu of the PTC. Under the bill, the wind PTC would expire where construction begins in 2021 or later.

The bill would also retroactively extend the PTC through 2020 for closed-loop biomass, open-loop biomass, geothermal, landfill gas, trash facilities, qualified hydropower, and marine and hydrokinetic renewable energy facilities. Under current law, those technologies are generally only eligible for the PTC to the extent construction began before 2018 (other than certain closed-loop biomass and qualified hydropower technologies, which must be placed in service before 2018).

The bill also includes a one-year extension through 2020 of the new markets tax credit under Section 45D at \$5 billion.

As anticipated by the renewables industry, the bill did not include an extension of the ITC, which, in the case of solar, fiber-optic solar, qualified fuel cell, and qualified small wind energy technologies, is set to

begin phasing down next year from 30% to 26%.

The tax extenders were included in an amendment to the spending bill, entitled **The Taxpayer Certainty and Disaster Tax Relief Act of 2019**.

The bill needs to be approved by the Senate and signed into law by the president by Friday, December 20 to avoid a government shutdown. It is unclear if the bill will receive similar support in the Senate. We will be following developments as they unfold in the coming days.

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# Senate Passes Tax Extenders Deal That Includes Extension of Renewable Energy Incentives

Article By:  
Philip Tingle  
Heather Cooper  
Martha Groves Pugh  
Justin Jesse

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The US Senate today passed a package of tax extenders as part of the year-end appropriations act that the US House of Representatives passed on December 17, 2019. President Trump is expected to sign the legislation before the end of the day tomorrow to avoid a government shutdown. The package includes a one-year extension of the production tax credit (PTC) under section 45 for wind and other technologies. It also includes limited extension of other energy tax incentives that were set to expire and a retroactive extension for some credits that had already expired in 2018. Most of the credits will now expire at the end of 2020, setting up the prospect of a broader tax extenders deal during lame duck session after the 2020 election. The bill also included a one-year extension through 2020 of the new markets tax credit under Section 45D at \$5 billion.

## Extension of Energy Tax Credits

Many energy tax credits and incentives are scheduled to expire or begin to phase out at the end of 2019 or have already expired. The Further Consolidated Appropriations Act will extend the expiration date to the end of 2020 for many credits. The package did not include an extension or expansion of the Investment Tax Credit (ITC), disappointing the solar industry. The extenders package also did not include the proposed expansion of the ITC for energy storage technology or the extension of energy credits for offshore wind facilities.

## Production Tax Credit

The PTC provides a credit for each kilowatt hour of energy production for qualified renewable energy facilities. The PTC expired for non-wind technologies at the end of 2017, while a reduced credit of 40% was available for wind facilities through the end of 2019, expiring for years 2020 and beyond. As we reported previously in [House Passes PTC, NMTC Extension](#), under the tax extenders package, projects that begin construction in year 2019 are eligible for the 40% credit, and projects that begin construction in 2020 will be eligible for a 60% credit. This potentially leaves taxpayers in a frustrating position to the extent they already took steps to begin construction on a wind project in 2019 to take advantage of the 40% credit in anticipation of its expiration at the end of 2019. Taxpayers seeking the increased 60% PTC for wind projects will need careful planning to ensure any work done in 2019 does not attach to the 2020 project, thus dropping the credit to 40%.

Additionally, the full PTC would be retroactively revived and extended through 2020 for:

- Closed loop biomass
- Open loop biomass
- Geothermal plants
- Landfill gas (municipal solid waste)

- Trash (municipal solid waste)
- Qualified hydropower
- Marine and hydrokinetic renewable energy facilities

Under current law, those technologies are generally only eligible for the PTC to the extent construction began before 2018 (other than certain closed-loop biomass and qualified hydropower technologies, which must be placed in service before 2018). Under the extenders package, those dates would all be extended out to the end of 2020.

### **Investment Tax Credit**

The Investment Tax Credit (ITC) allows taxpayers to claim a credit for the cost of investment in qualified energy property. The ITC for solar is scheduled to phase down from a 30% credit where construction begins before December 31, 2019, to a 26% credit where construction begins in 2020, and a 22% credit where construction begins in 2021. The ITC drops to 10% where construction begins before January 1, 2022, and the project is not placed in service before January 1, 2024. A similar phase down applies to fiber-optic solar equipment, fuel cell property, micro-turbine property, combined heat and power property, and certain small wind projects, although those projects are ineligible for any ITC if not placed in service by January 1, 2024.

The tax extenders proposal extends the ITC in lieu of the PTC for wind facilities where construction begins in 2020. Those projects would be eligible for 60% of the ITC (mirroring the phase down to 40% then up again to 60% for wind PTC). Otherwise, the extenders package does not affect the ITC.

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Xcel Energy Information Request No. 19  
Docket No.: E002/PA-19-553  
Response To: MN Department of Commerce  
Requestor: John Kundert, Steve Rakow  
Date Received: March 6, 2020

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Question:

Topic: Union Proposal  
Reference(s): Reply Comments at pages 11 and 12

Is Xcel willing to agree to a condition related to the purchase agreement that requires Seller to sign a Project Labor Agreement (PLA) for Mower County while keeping the currently agreed purchase price unchanged?

Response:

As the Company discussed in its January 31, 2020 Reply Comments, and consistent with the Company's preference for the use of union labor, Seller executed an Engineering Procurement and Construction (EPC) contract with White Construction, Inc. (White), which is an EPC provider known in the industry to use union labor.

In response to this request, the Company reached out to White to inquire about its efforts to secure local union labor for the Mower County repowering project (Project). Through those conversations, we obtained additional assurances from White that its current scope of work for the Project is comprised exclusively of union labor and that, since being appointed as the EPC provider, it has taken the necessary steps to staff the Project with union labor. Specifically, White reached out to the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers (Iron Workers); Laborers International Union of North America (LIUNA); International Union of Operating Engineers (Operators); and International Brotherhood of Electrical Workers (IBEW) regarding staffing the Project pursuant to its national Wind Turbine Agreement with these unions. A copy of the Wind Turbine Agreement—which is equivalent to a uniform PLA used by White for the assembly and erection of wind turbines throughout the United States—is included as Attachment A to this response. Each of these international unions then reached out

to the applicable local union halls (Iron Workers Local Union No. 512, LIUNA Local Union No. 405, Operators Local Union No. 49, and IBEW Local Union No. 343) and agreed to use the Wind Turbine Agreement for the Project. Letters from each of the unions approving the extension of the Wind Turbine Agreement to the Project are included in Attachment B to this response.

Since then, White has been in regular contact with the international unions and local union halls to facilitate the hiring of local union workers for the Project. White also noted it would be holding pre-construction meetings regarding the Project in all of the local union halls.

As a result of White's contractual commitments related to the Project under the Wind Turbine Agreement, and the efforts White has taken to secure union labor pursuant to that agreement, we are confident that local union labor will be used for the Project. We will continue to monitor the Mower repowering including the use of union labor, and we could provide an update to the Commission as the Project progresses.

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Preparer: Bria Shea  
Title: Director, Regulatory and Strategic Analysis  
Department: NSPM Regulatory  
Telephone: 612-330-6064  
Date: March 16, 2020



## WIND TURBINE AGREEMENT

This agreement is entered into this 7th day of July 2005 and revised 1<sup>st</sup> day of October 2008, between White Construction Inc. hereinafter referred to as the "Employer" or White, and the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers "Iron Workers", Laborers' International Union of North America "LIUNA", International Union of Operating Engineers "IUOE" and the International Brotherhood of Electrical Workers "IBEW", hereinafter referred to as "Unions." This agreement covers the assembly and erection of wind turbines, including foundations, towers and site work, only at project sites where this agreement has been extended.

Extensions for this agreement shall be requested on a project basis and shall be extended, in writing, for the project location. If a signatory Union denies an extension, an immediate meeting shall be held between International signatory Unions. A majority vote shall determine if the request is approved or denied. Extension requests by Employer to Unions shall not be unreasonably withheld. This agreement is between the Employer and the International Unions only.

In entering into this Agreement, all parties recognize the terms and conditions covered by this Agreement are a departure from normal building and construction trades traditional work practices and conditions and therefore, in good faith have arrived at the special conditions provided herein.

### ARTICLE 1-RECOGNITION, SCOPE and UNION SECURITY

1.1 The Employer hereby recognizes the Unions as the sole and exclusive bargaining agent for all employees engaged in the assembly and erection of wind turbines, including foundations, towers and site work, at Designated Projects.

1.2 The Employer agrees to comply with the contractual wages, fringe benefits, hours and other working conditions established between the "unions" affiliates and the employers or recognized employer agencies in the localities in which the company does any work within the jurisdiction of the "unions" unless otherwise modified by this agreement. This agreement does not apply to superintendents, office and clerical employees, watchman or other professional or supervisory employees as defined in the National Labor Relations Act, as amended.

1.3 All employees covered by this agreement, as a condition of continued employment, shall, commencing on the eighth day following the beginning of their employment, or the effective date of this agreement, whichever is later, acquire, and for the duration of their employment, maintain membership in the union. This provision shall not apply where and if such a requirement for continued employment is prohibited by state law; provided, however, that where an agency shop is lawful in any such state, conformity therewith shall be a condition of employment on the eighth day following beginning of such employment, or the effective date of the agreement, whichever is the later period.

1.4 Employer shall have the right to assign their rights afforded under this agreement to any subsidiary, Limited Liability Corporate, or division which employer holds a direct financial interest.

**ARTICLE II WAGES and FRINGE BENEFIT CONTRIBUTIONS**

2.1 Payment of annuity, pension and/or health and welfare contributions for an employees work in each locality shall be made to such funds and in such amounts as are identified in the applicable bargaining agreement for that locality, provided that the designated fund is signatory to the union or unions National Reciprocal Agreement. In the event such annuity, pension and/or health and welfare fund is not signatory to the appropriate National Reciprocal Agreement, the equivalent contribution amounts shall be paid to the relevant fund identified in the collective bargaining agreement of the Union or Unions affiliate in the employee's home area.

2.2 Except for the employees represented by the IBEW, the Employer may, at its discretion, submit the contributions to the employee's home-area local union or district council funds. If the Employer chooses the option, it shall provide sufficient proof to the work area local union or district council funds that the appropriate contribution amount has been paid to the employee's home area local union or district council fund. In the case of employees represented by the IBEW, the employer shall make contributions on behalf of all employees to the collection agent in whose jurisdiction the work is located at the specified rate in the Inside/Outside local union's construction agreement. Employees represented by the IBEW may reciprocate contributions to their home fund provided they have properly registered with the IBEW Electronic Reciprocal Transfer System (ERTS). However, in no event shall the Employers "key" traveling employees be paid less in wages, and annuity, pension, and/or health and welfare contributions, than what is required under their home-area local union or district council collective bargaining agreement. This provision, Article II, is strictly limited to the company payment of annuity, pension and/or health and welfare contributions. The Employer is obligated to pay dues check-off and all other contributions required under the applicable work-area collective bargaining agreement to the work-area local union or district council.

2.3 The Employer agrees to be bound by and will sign all legally constituted trusts which have been established between the unions affiliates and recognized bargaining agencies of contractors in the area. It is understood that the sale purpose of becoming bound and signing these documents is to allow White Construction to contribute fringe benefit payments and does not bind White Construction to any other agreements or create further bargaining obligations.

2.4 Industry Advancement or Promotion Funds called for in the local labor agreement may be paid at the discretion of the Employer. International Labor Management Trusts i.e. IMPACT, NLMCC or LECET will be paid at the applicable rate. However, if the employer elects to make payments to any local fund, he is hereby obligated to make payments to all such local funds.

2.5 Once White's headquarters is notified by certified mail, return receipt requested, or by telegram, FAX, or other electronic means, that White or a jobsite subcontractor are delinquent in contributions to fringe benefit funds, apprenticeship funds, dues check-off or any other contractually required contributions for work at Designated Projects, and does not respond positively by forwarding said contributions to the appropriate place of receipt within ten (10) business days, the provisions of Article V shall not apply and the aggrieved Union may legally withhold services to the delinquent employer at the Designated Project. However, it is understood that such action, consistent with Article V, does not allow said craft to establish any picket line.

### ARTICLE III SUBCONTRACTING

3.1 White shall notify any potential subcontractor of the existence of the terms and conditions of this agreement.

3.2 In the event White subcontracts out any work at Designated Projects, such subcontractors shall be signatory to the appropriate local collective bargaining agreement(s) with each craft employed by the subcontractor(s). However, if the terms and conditions of the local collective bargaining agreement(s) conflict with this Agreement, this Agreement shall supersede.

3.3 It is understood that there may be instances when suitable, competitive union subcontractors may not be available for certain subcontracts. In such instances White will notify the union(s) in a timely manner prior to the bid or award of the subcontract and the union will endeavor to locate suitable, competitive union subcontractors to bid for the work. If White and the unions are unable to locate such suitable, competitive subcontractors, or if no union subcontractor submits a competitive bid, it is understood and agreed that White may appeal to the International President of the union whose work is involved to be relieved of the requirements of 3.2.

### ARTICLE IV-HIRING and EQUAL OPPORTUNITY

4.1 The Unions agree to refer personnel to Designated Projects upon a nondiscriminatory basis, such referral to be made upon the request of the Employer who retains the right to reject or accept the applicants for employment. The Unions affiliates having jurisdiction in the respective areas of the performance of work will maintain appropriate nondiscriminatory facilities for the registration and referral of personnel possessing the skills required for the performance of work by the Employer. The Employer agrees to use said facilities in filling job vacancies on all projects.

4.2 In the event that no such facilities are maintained or that the facility maintained is unable to fill requisitions for employees within a 48-hour period, excluding Saturdays, Sundays, and holidays, the Employer may employ applicants directly at Designated Projects on a nondiscriminatory basis. In such event, the Employer will notify the Unions affiliate of the names and classifications and the dates of such hiring's.

4.3 The Employer shall have the right to assign key employees to the project. Key employees are defined as craft employees who possess special skills or abilities and are not readily available in the area. Key personnel shall be named and agreed to at the pre-job conference. It is agreed that the ratio of "key" employees to employees secured locally (provided local employees are available) shall not exceed one to one.

4.4 Upon completion of the work, White shall advise of their departure.

4.5 In referring to employees in this agreement, the masculine gender is used for convenience only and shall refer to both males and females.

4.6 The parties agree that affirmative action will be taken to afford equal opportunity to all qualified persons without regard to race, religion, creed, color, age, sex, or national origin, physical or mental disability, marital status, disabled veterans, Vietnam-era veterans or any other reasons not prohibited by law. The parties agree to establish a respectful workplace free from sexual harassment, including racial or sexual graffiti.

4.7 Seniority shall not be recognized on projects covered by this agreement.

#### **ARTICLE V-GRIEVANCES and NO STRIKE, NO LOCKOUT**

5.1 All disputes arising out of work performed at Designated Projects are subject to this Article. In the interest of uninterrupted progress on any and all work at Designated Projects, the parties hereby agree that there shall be no lockout by the Employer, and there shall be no strikes, picketing or work stoppages, slow downs or other disruptive activity for any reason by the Union or by any employee. The Unions and the applicable local unions shall not sanction, aid, or abet, encourage or continue any work stoppage, strike, picketing or other disruptive activity which violates this Article and shall take all reasonable means to prevent or to terminate any such activity. No employee shall engage in activity that violates this Article.

5.2 Neither the International Union(s) nor its local union(s) shall be liable for acts of employees for which it has no responsibility. The International Union(s) will immediately instruct, order and use its best efforts to cause its local union(s) to cease any violation of the Article. If it complies with this obligation, the International Union(s) shall not be liable for unauthorized acts of its local union(s). The principal officers of the local union(s) will immediately instruct, order and use their best efforts to cause the employees of the local union(s) they represent to cease any violation of this Article. If it complies with this obligation, the local union(s) shall not be responsible for unauthorized acts of employees it represents.

5.3 Should any dispute or grievance arise under any of the terms of this Agreement, the union and Employer's management mutually agree that an attempt will be made to settle any dispute or grievance at the local level between the Project Manager and steward. In the event that the dispute or grievance cannot be resolved at this level, an attempt shall be made by the Employer's designated management representative and the area (District Councilor Local Union) representative designated by the Unions to resolve the dispute

5.4 If the parties in the local area do not succeed in resolving such dispute or grievance, notice shall be given promptly to the Employer and to the General President of the Union involved. Upon receipt of such notice, the Employer and the General President shall each immediately designate a representative and notify the other party of the representative's name and address. The representatives appointed shall contact each other and make arrangements for a meeting to be held within ten calendar days or at any mutually agreeable date and place for the purpose of resolving the issues involved.

5.5 Disputes involving the application or interpretation of this Agreement which are not resolved between the two representatives referred to in Sections 3 and 4 above shall then be referred to an impartial third party, selected under the Rules of the American Arbitration Association who shall within thirty (30) days, or at a mutually agreed upon earlier date and at a mutually agreed upon place, consider the issues involved in the dispute. Any decision reached by the Arbitrator shall be final and binding upon all parties for the duration of this Agreement. The Arbitrator shall have no authority to render a decision which would add to, detract from, or in any way alter this Agreement. The parties shall equally divide the cost of the Arbitrator.

5.6 Since presently established jurisdictional dispute settlement procedures are not applicable to work covered by the Agreement, then any disputes that arise shall be referred to the General Presidents, for resolution. It is agreed that the employer and each subcontractor(s) are individually responsible for making specific work assignments for work coming under their individual contracts or subcontracts.

#### **ARTICLE VI-AGREEMENT EXTENSION and PRE-JOB CONFERENCE**

6.1 White agrees to submit an agreement extension notification to the unions, notifying them of jobs where this agreement is to be utilized, describing the location, size and extent of the job and the proposed starting date. It is a violation of this agreement to start a covered project without a pre-job conference subject to the provisions set forth below.

6.2 White and representatives of the unions' district councils and/or local unions having jurisdiction shall hold a pre-job conference so that the start and continuation of work may progress without interruption. It shall be the purpose of the pre-job conference for the employer and the union to agree on such matters as the length of the workweek, starting and quitting times, the number of employees involved, the method of referral, the check-off of union dues, initiation fees or agency shop fees, applicable wage rates and fringe benefit contributions, craft work assignments, holidays, safety procedures and any other matters, provided that it is agreed that interpretations of this agreement shall be a matter for the principal parties hereto.

#### **ARTICLE VII-SHIFT WORK**

7.1 When shifts are desired, notification must be made to the Business Manager (s) of the local union(s). Shifts may be established when considered necessary by White. Shift hours and rates will be as follows:

First Shift-Eight (8) hours plus one-half (1/2) hour for lunch.

Second Shift-Seven (7) and one-half hours worked for eight hours pay plus one-half (1/2) hour unpaid lunch. Workmen on second shift shall receive eight (8) hours benefits provided they work the entire shift.

Third Shift-Seven (7) hours worked for eight (8) hours pay plus one-half (1/2) hour unpaid lunch. Workmen on third shift shall receive eight (8) hours benefits provided they work the entire shift.

7.2 If only two (2) shifts are worked, White may regulate starting times of the two (2) shift operation to permit the maximum utilization of daylight hours.

7.3 Nothing above prohibits the working of two (2) shifts at greater than eight (8) hours with excess hours to be paid at overtime rates.

#### **ARTICLE VIII-TRAVEL and SUBSISTENCE**

8.1 It is agreed that subsistence, travel allowance, mileage or pay for travel shall be paid at the discretion of the employer.

## ARTICLE IX – WORKING RULES

9.1 The time of the employee shall start at the jobsite at the beginning of the shift and shall end at quitting time on the job site. In cases where regular access is unavailable because of road conditions the employer shall provide transportation to the work area and pay shall begin at the time of pick up. Return trips shall be off the clock.

9.2 Any employee reporting for work and for whom no work is provided, due to inclement weather or other conditions beyond the control of the Employer, shall receive two (2) hours pay at the regular straight time hourly rate. Any employee who starts to work and works beyond the two (2) hours will be paid for actual time worked except as provided in 9.5. Whenever minimum reporting pay is provided for employees, they shall be required to remain at the project site available for work for such time as they receive pay, unless released sooner by the Employer's principal supervisor or designated representative. The provisions of this section are not applicable where the employee voluntarily quits, in which case the employee shall be paid for actual time worked.

9.3 Payday shall be once each week to be determined at the pre-job conference. Employees are to be paid at the end of their regular shift. When employees are discharged, they must be paid wages due them at the time of discharge. When employees quit, wages due may be mailed to the employee. The workweek, work day, holdback and payday shall be mutually agreed to at the pre-job conference.

9.4 Notwithstanding requirements of Article 2.2, White shall pay wages and benefits set forth in the appropriate local agreement(s). Fringe benefits shall be paid on an "hours worked" basis except as stipulated in section 7.1

9.5 All time worked before and after eight (8) hours, Monday through Friday, shall be paid at time and one-half. All work on Saturday shall be paid at the rate of time and one-half. All work on Sundays and/or holidays shall be paid at the rate applicable in the appropriate local agreement not to exceed double time.

9.6 White shall have the right to make and revise from time-to-time safety and working rules not inconsistent with the above or any other terms of this agreement, or with existing laws, provided proper notification to employees has been made.

9.7 It is the employer's exclusive responsibility to assure the safety and health of its employees and their compliance with federal, state, and local safety and health laws and regulations as well as the safety rules and standards contained herein.

9.8 The furnishing of tools, other than hand tools, or equipment shall not be a condition of employment. Where special safety equipment is required by the circumstances under which the employee is working, it shall be the responsibility of the employer to furnish such equipment at no cost to the employee.

9.9 There shall be no inequitable minimum or maximum amount of work which an employee may be required to perform during the working day and there shall be no restrictions imposed against the use of any type of machinery, tools, or labor saving devices. There shall be no bonus, bid, or task work; nor shall there be any limit on or curtailment of production. The Employer and the Unions agree that wage premiums, such as those based on height of work, type of work or materials, special skills, etc. impose unreasonable costs which effects Employer's competitiveness on the Covered Project, said premiums are considered contrary to

the best interest of the Employer and unions, and shall not be paid on the Covered Project by the Employer.

#### **ARTICLE X-DRUG and ALCOHOL FREE WORKPLACE**

10.1 The parties to this agreement do hereby recognize the need to provide a drug and alcohol free workplace.

10.2 Drug and alcohol testing for all work at Designated Projects shall be performed pursuant to White's policies and procedures. All disputes arising out of implementation of these policies shall be subject to Article V.

#### **ARTICLE XI-DURATION and SAVINGS CLAUSE**

11.1 This Agreement becomes effective October 1, 2008, and shall continue in effect until December 31, 2010. It shall continue in effect from year to year thereafter, from January 1 through December 31 of each year, unless terminated by the following procedure. Either party desiring to change or terminate this agreement must provide written notification to the other party at least sixty (60) days prior to the expiration date of the agreement or any anniversary date occurring thereafter. With respect to any jobs in progress as of the expiration date, termination shall not be effective until the completion of such jobs.

11.2 In the event that any state or federal statute or regulations shall supersede, invalidate or be in conflict with any clause in this agreement, such statute or regulation shall prevail over any such clause; however, the other provisions of this agreement shall be valid and remain in full force and effect.

#### **ARTICLE XII -WORK JURISDICTION**

12.1 There will be no strikes, no work stoppages or slow downs or other interferences with the work because of jurisdictional disputes.

12.2 Employer and the Unions who are a party to this agreement consent to the work assignments as detailed in Exhibit "A" to this agreement. Prior to the commencement of construction work, and at the mutual direction of the Employer and the Unions, a pre-job conference shall be held between the representatives of the unions and White to discuss all anticipated work and such assignments. The assignments made in Appendix "A" can be modified for local area practice or other relevant reasons by mutual consent of the unions and White at the pre-job conference. The assignments in this agreement shall be applicable to this agreement only and shall not be construed as creating a work assignment precedent.


For the Employer:

White Construction, Inc.  
P.O. Box 249  
Clinton, IN 47842


  
Herman White II, President

For the Unions:

International Association of Bridge  
Structural, Ornamental and Reinforcing  
Ornamental Iron Workers

  
Joseph O. Hunt, General President

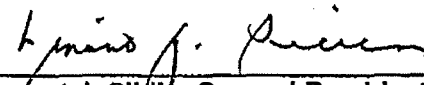
Laborers' International Union of North America

  
Terence M. O'Sullivan, General President

International Brotherhood of Electrical Workers

  
Edwin D. Hill, International President

International Union of Operating Engineers

  
Vincent J. Giblin, General President



Appendix "A"Docket No. E002/PA-19-553  
DOC Information Request No. 19  
Attachment A - Page 9 of 15Scope of WorkSite Work, Foundations, Roads, U/G Electrical Collection

ITEM	WORK ACTIVITY Description	TRADE ASSIGNMENT
1.0	Foundation Excavation	IUOE
2.0	Generator Foundation	
	Type A Drilled Shaft Type	
	Outside Can	Iron Workers
	Inside Can	Iron Workers
	Anchor Bolt & Rebar Assembly	Iron Workers
	Install Conduit & Grounding Foundation	IBEW
	Pour Structural Concrete	LIUNA
	Place Cap Form	Iron Workers
	Pour Cap Concrete	LIUNA
	Finish Cap Concrete Only	LIUNA
	Strip & Clean	LIUNA
	Type B Spread Footing	
	Place Forms	Iron Workers/ LIUNA
	Place Reinforcing Steel	Iron Workers
	Place Anchor Bolts	Iron Workers
	Pour Structural Concrete	LIUNA
3.0	Pre-cast (Pre-fab) Transformer Vault or Pad (if Applicable)	IBEW
4.0	Electrical Collection System	
	Trenching ( <u>When Self Performed</u> )	IUOE
	Install Cable	IBEW
	Backfill	IUOE/ LIUNA
	Terminate Power & Control Cable	IBEW
5.0	Electrical Switchyard (if any)	
	All work with the exception of footers, Foundations, and fences,	IBEW Outside Branch
6.0	Site Roads & Access	
	Equipment	IUOE
	Hand work	LIUNA
7.0	Cranes, Pickers.	IUOE
8.0	Set Base Plates	Iron Workers
9.0	Pick-Up Trucks	Respective Trade

Off-Loading, Tower Erection, Installation, Completion

ITEM	WORK ACTIVITY Description	TRADE ASSIGNMENT
1.0	Off-Loading Receive and off-load ALL components	Iron Workers
2.0	Nacelle Preparation Install loose components	Iron Workers/ IBEW Composite
3.0	Rotor & Blade Assembly Connect blades to rotor hub	Iron Workers
4.0	Set Controller (if attached to tower base) If as separate Electrical component	Iron Workers IBEW
5.0	Base Setting & Assembly Set base section, secure & torque Grouting	Iron Workers LIUNA
6.0	Lower Mid Setting & Assembly Set lower mid, secure & torque	Iron Workers
7.0	Upper Mid Setting & Assembly Set upper mid, secure torque	Iron Workers
8.0	Tower Setting & Assembly Set tower, secure & torque	Iron Workers
9.0	Nacelle Setting Set nacelle, secure & torque	Iron Workers
10.0	Rotor & Blade Setting Set rotor & blade assembly, secure & torque	Iron Workers
10.1	Tag Line Assistance	ANY TRADE PRESENT
11.0	Electrical Completion Terminations & Cabling	IBEW
12.0	Start-up and Commissioning	Client/Manufacturer
13.0	Cranes, Pickers	IUOE
14.0	Gen. Clean up	LIUNA
15.0	Pick-Up Trucks	Respective Trade
16.0	Main Erection Crane Assembly & Tear Down	Iron Workers IUOE
17.0	Ancillary Intermittent, As Needed	ANY TRADE PRESENT

White Wind Turbine Agreement Interpretation No. 1 (Appendix "A" – Item 4.0)

In the event the Electrical Collection System is awarded to an IBEW signatory outside line contractor, the operation of equipment and backfilling by hand required for trenching and backfilling associated with the installation of the collection system may be performed by members of the IBEW.

In all other cases, work will be assigned in accordance with Appendix "A".

Adopted by the Executive Committee September 25, 2008

**Addendum to Wind Turbine Agreement October 24, 2005 Revised-October 1, 2008**

**Post Offer Pre-Employment Fit for Duty**


This agreement is entered into this 23rd day of August 2018, between White Construction Inc. hereinafter referred to as the "Employer" or White, and the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers "Iron Workers", Laborers' International Union of North America "LIUNA", International Union of Operating Engineers "IUOE" and the International Brotherhood of Electrical Workers "IBEW", hereinafter referred to as "Unions."

The Post Offer Pre-Employment Fit for Duty protocol is attached as Appendix B and made part of the original Wind Turbine Agreement entered into on the 7th day of July 2005 and revised 1st day of October 2008.

The Employer and Unions agree to a Post Offer Pre-Employment Fit for Duty physical exam for employee Candidates to ensure they are fit to perform the work and tasks required of the Tower Climbing positions without putting their own or others health and safety at risk. This Addendum applies to full-time, harnessed Tower Climbing positions for: Walk Down Quality Control Technicians, Electrical Tower Wiring or Walk Down Electricians, Laborers performing Tower Cleaning, and Ironworkers performing Main Erection, Base/Mid Erection, Blade Tensioning, and Climb Assist Installations.

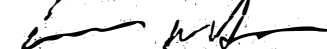
For the Employer:

**White Construction, Inc.  
P.O. Box 249  
Clinton, IN 47842**

  
Berthelsen, David  
2019.03.26 14:14:12 -04'00'  
**David Berthelsen, President**

For the Unions:


**International Association of Bridge  
Structural, Ornamental and Reinforcing  
Ornamental Iron Workers**

  
**Eric Dean, General President**

**Laborers' International Union of North America**

  
**Terence M. O'Sullivan, General President**

**International Brotherhood of Electrical Workers**

  
**Lonnie R. Stephenson, International President**

**International Union of Operating Engineers**

  
**James T. Callahan, General President**



**APPENDIX B**  
AUGUST 23, 2018

White Construction, Inc.

3900 E. White Ave.  
P.O. Box 249  
Clinton, IN 47842  
Tel (800) 355 9401  
www.whiteconstruction.com

**Post Offer Pre-Employment Fit for Duty Physical Exam Protocol**

**I. Tower Climbing - Job Classifications Requiring a Physical Exam:**

Per the Wind Turbine Agreement, the following job classifications are approved for post offer pre-employment physical exam by a Medical Doctor to Prospective Employees who are required to have a successful physical exam *completed prior to starting work.*

Classifications listed below are for jobs that require daily climbing for the majority of the day to fulfill expected duties. This includes employees who are required to wear a harness while performing their primary responsibilities inside a wind turbine:

- Quality Control - Technicians
- Laborers (LIUNA) - Tower Cleaners
- Ironworkers (IW) - Main Erection, Base/Mid Erection, Blade Tensioning and Climb Assist Installation Tower Workers
- Electricians (IBEW) - Electrical Tower Wiring or Walk Down Electricians

***Employment is contingent upon Passing the Fit for Duty Physical Exam.***

**II. The Off-Site, Medical Doctor Visit, Physical Exam will include:**

- A Health History Review,
- A Head To Toe Physical,
- A Vital Signs Check (Includes Blood Pressure),
- A Vision Acuity Test,
- An UA Dip (Presence Of Blood - Sugar - Protein),
- And An ECG.

The weight limit to be Tower Climbing qualified is 250 pounds. This is a safety and health factor for individuals involved in any Safety/Rescue situation. The weight is determined by considering the total weight limits of ladders and rigging, harnesses including equipment and tools, as well as the combined weight of any two climbers in a potential rescue situation. Requirements are based from OSHA 29 CFR 1926.502 and 29 CFR 1910.66 Standards.

**III. The Jobsite Position Physical Expectations and Requirements (Not Tested in Physical Exam):**

However, the Prospective Candidates should understand they must meet the physical requirements and fulfill job expectations as listed below. These are listed also on the Tower Climbing Craft Dispatch Request form.

- Able to lift/carry materials that are an average weight of 35 pounds, up to 70 pounds, 6-8 hours daily, from waist, shoulder or even above shoulders.
- Requires individual to communicate via hearing, speaking and seeing throughout the day.
- Must be comfortable with heights (260 feet or more) and confined spaces.
- Able to Sit or be in a stationary position, at times 6-8 hours daily.
- Capable of standing, walking and climbing as much as 6-8 hours daily.
- Reaching/Positioning self as frequently as 6-8 hours daily.
- Operate/Activate foot controls up to 4-6 hours daily.
- Lifting/Transporting up to 6-8 hours daily.
- Ability to operate hand controls as much as 6-8 hours daily.  
This includes finger manipulation and repetitive motions.
- Able to tolerate exposure to weather (ranging from hot, cold, rain, sun, snow) up to 6-8 hours daily.

**IV. Completing the Physical Exam Process**

- A) Procedures will be managed by the White Construction, Inc. Human Resources Department in conjunction with an independent Third-Party Administrator who is responsible for all testing and determinations.
- B) The union referred Prospective Employee Craftworkers will be required to "Pass" a physical exam described above prior to arriving on the job site.
- C) **STEPS**
  - 1) White Construction will provide a Tower Climbing Craft Dispatch Request form to the union when requesting Tower Climbing Prospective Employee Craftworkers. The physical exam/requirements are listed on the Tower Climbing Craft Dispatch form.
  - 2) The union should inform the Prospective Employee Craftworkers of the physical exam/requirements before taking the physical exam.
  - 3) The Craft Dispatch Request form must be filled out by the union and returned to the White Construction representative identified on the form, or their designated representative. The Candidate's complete name, address and contact information must be included.

- 4) The Third-Party Administrator will contact the Prospective Employee Craftworkers to coordinate the location and date/time for them to complete the test and provide any other necessary information on scheduling the test.
  - 5) The testing vendor will deliver results to our Third-Party Administrator who will review and provide a final authorization of a "Pass" or "No Pass".
  - 6) When the Third-Party Administrator issues a "No Pass" to the Prospective Employee Craftworkers, they are not eligible for employment per that respective Tower Climbing Craft Dispatch Request call and will be turned around to the union.
  - 7) Prospective Employee Craftworkers identified under step 6 as a "No Pass", may voluntarily elect to coordinate efforts with the Third-Party Administrator in resolving issues that did not allow for a "Pass" of the physical exam. Upon successfully resolving the issues, the Candidate is eligible to accept an available Tower Climbing opening.
  - 8) The proper authorization must be on file with White Construction from our Third-Party Administrator indicating a "Pass" for the physical exam prior to any new hires arriving on the job site.
  - 9) Employees eligible to Tower Climb will be provided a hard hat sticker (by on-site Safety Management) that must be visible at all times.
  - 10) Only those employees with the "OK TO CLIMB" shall be granted access to Tower Climbing.
- D) The Prospective Employee Craftworkers who "Pass" the physical exam *and* begins work at the job site, will be paid four (4) hours of base rate pay without benefits.
- E) The Prospective Employee Craftworkers who "Pass" the physical exam, but are then "turned around" to the union for any reason (except for a "No Pass"), will be compensated a lump sum equal to four (4) hours of base rate pay and will be sent to the union of referral.
- F) The Reviewing Medical Provider issues a Fit for Duty (FFD) statement which is then delivered to the designated HR representative at White Construction in compliance with the ADA and specifies a "Pass" or "No Pass". White Construction does not receive any information containing Protected Health Information (PHI).



Northern States Power Company

Docket No. E002/PA-19-553  
Attachment C  
Page 18 of 21

Docket No. E002/PA-19-553  
DOC Information Request No. 19  
Attachment B - Page 1 of 4

# International Union of Operating Engineers

AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

February 27, 2020

## VIA EMAIL

JAMES T. CALLAHAN  
GENERAL PRESIDENT

BRIAN E. HICKEY  
GENERAL SECRETARY-TREASURER

GENERAL VICE PRESIDENTS

JAMES M. SWEENEY

ROBERT T. HEENAN

DANIEL J. MCGRAW

DAREN KONOPASKI

MICHAEL GALLAGHER

GREG LALEVEE

TERRANCE E. MCGOWAN

DOUGLAS W. STOCKWELL

RONALD J. SIKORSKI

JAMES T. KUNZ, JR.

EDWARD J. CURLY

CHARLIE SINGLETARY

DAN REDING

WILLIAM LYNN

TRUSTEES

KUBA J. BROWN

CHAIRMAN

BRIAN COCHRANE

JOSHUA VANDYKE

BARTON FLORENCE

THOMAS A. CALLAHAN

GENERAL COUNSEL

MATTHEW G. MCGUIRE

Mr. Rex Roberts  
Labor Relations Manager  
White Construction, Inc.  
3900 E. White Avenue  
P.O. Box 249  
Clinton, IN 47842

RE: FPL Energy Mower County, LLC  
Mower County Wind  
Mower County, MN

Dear Mr. Roberts:

In response to your request dated February 26, 2020, you are hereby granted permission to extend your Wind Turbine Agreement with this organization, to cover the above-referenced project.

Sincerely,

JAMES T. CALLAHAN  
GENERAL PRESIDENT

By: Joseph A. Giacini  
Chief of Staff

JAG/kjm

cc: Jason George, Business Manager, IUOE Local 49  
Todd Smart, IUOE Director, North Central Region





International Association of

# Bridge, Structural, Ornamental and Reinforcing Iron Workers

ERIC M. DEAN  
GENERAL PRESIDENT

RONALD J. PIKSA  
GENERAL SECRETARY

KENNETH "BILL" DEAN  
GENERAL TREASURER



SUITE 400  
1750 NEW YORK AVE. N.W.  
WASHINGTON, D.C. 20006  
(202) 383-4800

Affiliated with AFL-CIO

February 28, 2020

Mr. Rex Roberts, Labor Relations Manager  
White Construction, Inc.

Via email: [rex.roberts@whiteconstruction.com](mailto:rex.roberts@whiteconstruction.com)  
[mhein@whiteconstruction.com](mailto:mhein@whiteconstruction.com)

Dear Mr. Roberts:

This letter will serve to notify White Construction, Inc. that the request to use the Wind Turbine Agreement for the following project has been approved:

Mower County Wind  
Mower County, MN

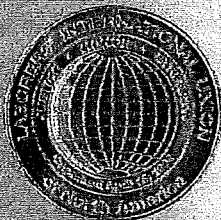
It should be noted that this project is located within the jurisdiction of Iron Workers Local Union No. 512, Duluth, Minnesota.

With best wishes, I am

Fraternally yours,

General Secretary

RJP:kab  
cc: General Organizer Mike Baker  
IWLU 512



# LIUNA!

March 2, 2020

TERRY O'SULLIVAN  
*General President*

ARMAND E. SABITONI  
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*General Counsel*

HEADQUARTERS:  
905 16th Street, NW  
Washington, DC  
20006-1765  
202-737-8320  
Fax: 202-737-2754  
www.liuna.org

White Construction, Inc.  
Mr. Rex Roberts, Labor Relations Manager  
3900 East White Avenue  
P.O. Box 249  
Clinton, IN 47842

Re: Wind Turbine Agreement  
FPL Energy Mower County, LLC  
Mower County Wind  
Mower County, Minnesota

Dear Mr. Roberts:

Please be advised that your extension request dated February 26, 2020, regarding the above-referenced project has been approved on behalf of this International Union. Please contact the Regional Office specified below in order to schedule a mutually convenient time and location to conduct a pre-job conference.

Mr. Terrence M. Healy, Vice President and Regional Manager  
8770 West Bryn Mawr Ave., Suite 1212  
Chicago, IL 60631  
Telephone: (773) 693-7990

Your time and attention to this matter are appreciated.

With kind regards, I am

Sincerely yours,

*Terry O'Sullivan*  
TERRY O'SULLIVAN  
General President

kng  
opeiu2liuna

cc: Great Lakes Regional Office

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International President

KENNETH W. COOPER  
International  
Secretary-Treasurer

March 2, 2020

Mr. Rex Roberts  
Labor Relations Manager  
White Construction, Inc.  
3900 East White Avenue  
P.O. Box 249  
Clinton, IN 47842

**Re: White Construction, Inc. Wind Turbine Extension Agreement  
Approval**

Dear Mr. Roberts:

This letter is in response to your request for an extension of the White Construction, Inc. Wind Turbine Agreement at the Mower County Wind Project in Mower County, Minnesota. Please be advised your request has been approved.

If you need additional assistance, please contact the Construction and Maintenance Department at (202) 728-6184.

Sincerely yours,

Lonnie R. Stephenson  
International President

LRS:cmc  
Copy to David J. Ruhmkorff, International Vice President, IBEW Sixth District  
Chad Katzung, Business Manager, IBEW Local Union 343

**Mower County Project - Forecasted Monthly Capacity Factors**

Month	YEAR											
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
Jan	<b>[TRADE SECRET DATA HAS BEEN EXCISED]</b>											
Feb												
Mar												
Apr												
May												
Jun												
Sept												
Oct												
Nov												
Dec												
Average												

**Mower Count**

Month	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043
Jan	<b>[TRADE SECRET DATA HAS BEEN EXCISED]</b>											
Feb												
Mar												
Apr												
May												
Jun												
Sept												
Oct												
Nov												
Dec												
Average												

**Mower County**

Month	2044	2045
-------	------	------

Jan		
Feb		
Mar		
Apr		
May		
Jun		
Sept		
Oct		
Nov		
Dec		
Average		

**[TRADE SECRET DATA  
HAS BEEN EXCISED]**

**Mower County Project - Forecasted Expenses**

<b>Year</b>	<b>O&amp;M Expense</b>	<b>Land Lease Payments</b>	<b>Insurance Expense</b>	<b>Property/Production Tax Expense</b>
2020				
2021				
2022				
2023				
2024				
2025				
2026				
2027				
2028				
2029				
2030				
2031				
2032				
2033				
2034				
2035				
2036				
2037				
2038				
2039				
2040				
2041				
2042				
2043				
2044				
2045				

**[TRADE SECRET DATA HAS BEEN EXCISED]**

## **Attachment E – Accounting Issues Update**

The Department identified five accounting issues related to the Purchase Option in our Comments:

- Plant Material and Operating Supplies;
- Net Book Value of Mower County;
- Acquisition Adjustment;
- Timing of Depreciation Related to the Acquisition; and
- Proposed Cost Recovery Mechanism.

We recognized Xcel’s proposals regarding the plant material and operating supplies and its proposed cost recovery mechanism as reasonable in our December 13, 2019 Comments. The Department expressed concerns regarding Xcel’s proposal to pay a purchase price for the facility that was well in excess of its net book value, which then resulted in a large acquisition premium.

We did note however:

The Department’s position regarding the Purchase acquisition adjustment in this proceeding is similar to its position in the 18-777 proceeding. In light of the Commission’s recent Order, the Department recommends approval of the Company’s proposed acquisition premium only if the Company can identify benefits associated with the transaction that exceed the costs that Xcel proposes to charge to ratepayers for the acquisition premium. As discussed below under Strategist Modeling Issues, to date Xcel has not made such a showing.<sup>1</sup>

Given that Xcel and the Department have resolved the Strategist modeling issues referenced in that passage, the Department recognizes that the transaction as modeled does appear to provide benefits to ratepayers, assuming that the WPTC is not extended. If one accepts this premise, then the acquisition premium issue could be considered resolved, as conditioned above.

Thus, the net book value is the sole remaining issue. Our December 13, 2019 Comments discussed our concerns regarding the “suspension” of depreciation expense in May 2019 and that this action would result in an overstatement of net book value when the purchase was concluded. If the Commission approves the purchase, the condition listed at the end of these comments to reduce the net book value and purchase price by depreciation from June, 2019 onward would address that concern.

Thus all the accounting-related issues with the Purchase alternative would be resolved under the assumption that there will be no extension of the WPTC and with the above conditions.

---

<sup>1</sup> Department comments at page 10.



### **Attachment F – Strategist Modeling Update**

The Department’s December 13, 2019 comments at page 15 listed three concerns relative to Xcel’s modeling of the acquisition in Strategist. The Company:

- apparently used files related to the old, wind driven spot market pricing and not the new pricing files requested,
- locked-in a pre-determined expansion plan in Strategist and then merely redispached the pre-determined system with and without the Mower County project under various externality and CO2 regulatory cost assumptions, and
- estimated the benefits associated with the purchase by comparing Strategist’s energy production with and without Mower County to determine what energy was being displaced by Mower County’s output.

Regarding the first concern, the Department briefly reviewed Xcel’s updated Strategist analysis and determined that Xcel revised the spot market pricing inputs; nothing stood out as odd or outside of the current norms for Locational Marginal Prices (LMPs) in the updated model. Regarding the other two concerns, the Department’s review of Xcel’s updated Strategist analysis determined that wind, solar, battery and combustion turbine (CT) units must have been available for the model to choose since they appeared in non-least cost plans. While this high-level review should not be considered as an endorsement of the modeling, this change in available expansion units addresses for purposes of this filing the concerns about using Strategist as a dispatch model (concerns two and three).

Finally, the Department notes that, while number of states (potential plans) exceeds the model’s limit, the number of states discarded is not too large and it is unlikely that a lower cost plan was eliminated artificially. Overall, the Department concludes that Xcel addressed the Department’s basic Strategist concerns at this time, for purposes of this filing.<sup>2</sup>

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<sup>2</sup> The Department notes that this high-level analysis should not be taken to mean that the Department is in a position to assess the validity of Xcel’s updated integrated resource plan, which has yet to be filed.

**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  
Public Supplemental Comments**

**Docket No. E002/PA-19-553**

Dated this **8<sup>th</sup>** day of **April 2020**

**/s/Sharon Ferguson**

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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John	Coffman	john@johncoffman.net	AARP	871 Tuxedo Blvd.  St. Louis, MO 63119-2044	Electronic Service	No	OFF_SL_19-553_Official
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400  St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_19-553_Official
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John	Farrell	jfarrell@ilsr.org	Institute for Local Self-Reliance	2720 E. 22nd St Institute for Local Self-Reliance Minneapolis, MN 55406	Electronic Service	No	OFF_SL_19-553_Official

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