



August 28, 2017

Dan Wolfe, Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101-2147

RE: In the Matter of the Petition of Northern States Power for Approval of a Renewable Development Fund Oversight Process

Docket Nos. E002/M-00-1583; E002/M-07-675; E002/M-12-1278

Dear Mr. Wolfe:

I write on behalf of Friends of the Lock and Dam (“FL&D”), a 501 (c)(3) nonprofit organization that has as its sole mission to re-purpose the Upper St. Anthony Falls Lock to “The Falls,” a world-class destination visitor and interpretive center, consistent with the Central Riverfront Regional Park Plan. The Falls project is supported by the City of Minneapolis (“City”) and the Minneapolis Park Board, and has wide public support.¹

Pursuant to Minn. R. 7829.1400 Subp. 1, FL&D respectfully requests that the Commission accept this brief letter as comments on Xcel Energy’s Quarterly Status Report (“Status Report”). Minn. R. 7829.1400 provides that interested persons may submit comments on a public utility’s miscellaneous filing within thirty days of its filing date. Xcel’s Status Report was filed on July 27, 2017.

FL&D is aware that parties have not typically commented on Xcel’s previous quarterly Renewable Development Fund reports. In this case, however, Xcel and the renewable energy projects described in Xcel’s Status Report are subject to important new legislative requirements. Laws of Minnesota 2017, chapter 94, article 10, section 29 (“Section 29”). FL&D respectfully submits that public comments on this Status Report, in which Xcel describes its first steps to comply with the new requirements, are therefore appropriate.

To protect ratepayers, Section 29 demands increased scrutiny of uncompleted projects that were awarded renewable development fund grants five or more years ago. The Legislature was concerned about ratepayer-funded renewable energy projects that still had not met basic development milestones expected for a viable project. These milestones include, among others, the obvious need for grantees to obtain control of a site on which the project could

¹ The City has approved The Falls for 2018 bonding as part of its bonding priorities.

operate and applicable permits. Section 29, paragraph (b)(1) and (2). As a remedy for ratepayers, and to bring renewable energy to market sooner, the legislation unlocks renewable development funds held for projects that have not made the progress grantees had promised. Id. at paragraph (c).

The Legislature recognized that it is not in the public interest for Xcel to encumber its ratepayer funds for over five years in favor of stalled renewable energy projects. It determined that these funds should instead be made available to new grant applicants in a position to get new renewable energy projects completed in a reasonable amount of time.² The Legislature has reinforced that the purpose of the Renewable Development Fund is not, and has never been, to offer endless opportunities to grantees to get their projects off the ground.

Xcel's Status Report identifies the projects that were awarded grants five or more years ago, but it provides an incomplete picture. It includes a copy of the notifications Xcel sent to these grantees regarding the applicable new statutory requirements. However, the Status Report does not include the grantees' responses to Xcel regarding whether they believe their projects have met the legislative milestones. Nor is there information in the Status Report about the grantees' current compliance status under their grant agreements with Xcel.

One of these protracted projects, Crown Hydro, was awarded a grant in Xcel's first cycle of project funding in 2002. Fifteen years later, the developer still has not obtained control of a site to build the project and has not received any of the myriad permits needed to proceed. See, Status Report, p. 4. Crown has proposed to move the project to the Lock and Dam, an action that would pose extreme problems for The Falls. Crown's project has been opposed by the City and Park Board for years and now would potentially preclude The Falls, a project that meets many community planning objectives. Meanwhile, Xcel continues to earmark over \$3 million from the Renewable Development Fund to this small hydro project. Details of the status of Xcel's current grant contract with Crown Hydro are not contained in the Status Report.

Contrary to the Legislature's intent and the terms of Crown Hydro's grant agreement, however, Xcel has essentially given Crown Hydro perpetual access to the Renewable Development Fund. Five years after execution of the original grant to Crown Hydro, Xcel agreed to allow Crown a "final opportunity" to complete site acquisition; Xcel extended the term of the Crown Hydro grant contract until October 31, 2007.³ This contract amendment provided that "[if]

² The 2017 law, though it requires return of unexpended funds to a legislative account available for redistribution to new project grantees, it makes the original grantee eligible to compete with new project applicants, and regain its funding. Section 29, paragraph (d).

³ See, August 10, 2007, PUC Docket No. E002/M-00-1583, Crown Hydro Grant Contract – 3rd Amendment, p. 3 and Third Amended Exhibit C. Crown Hydro's original grant agreement required a Project completion date of August 31, 2003. First and second amendments to the contract extended the due dates to December 2004 and July 31, 2006, respectively.

acquisition of Project property has not occurred by 10/31/2007, [Crown] shall present a detailed report regarding its acquisition plan and efforts necessary to achieve acquisition of property and provide an updated draft [contract] amendment to Xcel Energy for review.” August 10, 2007, Third Amended Exhibit C, PUC Docket No. E002/M-00-1583. Crown failed to obtain site control in 2007 from either the Park Board or adjacent private landowners.

Another decade has passed, and Xcel has provided the Commission no notice of any subsequent changes to the Crown Hydro contract.⁴ To this day, however, Xcel encumbers ratepayer funds for a lapsed grant agreement with Crown Hydro. The Crown Hydro project is the poster child for the unfairness both to ratepayers and other potential recipients of renewable development funding that the Legislature sought to remedy last session.

For all of the reasons discussed in this letter, it is important that the Commission examine the 2017 amendments to the Renewable Development Fund statute in detail, and advise Xcel on their potential effect on agreements between Xcel and renewable development fund grantees. Such a review could occur now in response to this filing or as part of the Commission’s evaluation of Xcel’s Renewable Development Fund Annual Report this fall. FL&D strongly urges the Commission to act decisively to consider Section 29 and the actions it requires on the Crown Hydro grant and any other of Xcel’s expired contracts for renewable energy projects.

FL&D looks forward to formally participate in that review and requests the commission to advise on its preferred process for Section 29 consideration.

Thank you very much.

Sincerely yours,



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Cc: Elizabeth Goodpaster, Attorney for Friends of the Lock and Dam

⁴ Xcel characterized each of the amendments to the Crown Hydro contract as “Type 2” contract modifications for “minor” changes. FL&D submits that these contract modifications have resulted in a perpetual grant contract, which is clearly not a “minor change.” Instead, these amendments should be considered “Type 3” modifications that apply to “more material changes.” See, Commission’s June 28, 2005 Order in Docket No. E002/M-05-109 (approving proposed 3-tier administrative process for grant contract amendments).