



414 Nicollet Mall
Minneapolis, MN 55401

April 28, 2017

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

—Via Electronic Filing—

RE: IN THE MATTER OF THE FORMAL COMPLAINT AND PETITION FOR
RELIEF BY MINNESOTA ENERGY RESOURCES CORPORATION AGAINST
NORTHERN STATES POWER COMPANY D/B/A XCEL ENERGY FOR
VIOLATIONS OF MINN. STAT. § 216B.01 AND COMMISSION POLICY

DOCKET NO. G011, G002/C-17-305

Dear Mr. Wolf:

Northern States Power Company, doing business as Xcel Energy, submits to the Minnesota Public Utilities Commission the enclosed Response to the Minnesota Energy Resources Corporation's Formal Complaint and Petition filed April 19, 2017 in the above-referenced matter. Concurrent with its Response, the Company also submitted a Notice of Motion and Motion to Expedite, respectfully requesting that reply comments be due on May 9, 2017 at 4:30 p.m.

We have electronically filed this document with the Minnesota Public Utilities Commission, and copies have been served on the parties on the attached service list.

Please contact me at (612) 215-5331 or Amanda.Rome@xcelenergy.com with any questions.

Sincerely,

/s/

AMANDA J. ROME
LEAD ASSISTANT GENERAL COUNSEL

Enclosures
cc: Service List

STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION

Nancy Lange	Chair
Dan Lipschultz	Commissioner
Matthew Schuerger	Commissioner
Katie J. Sieben	Commissioner
John A. Tuma	Commissioner

IN THE MATTER OF A FORMAL
COMPLAINT AND PETITION FOR RELIEF
BY MINNESOTA ENERGY RESOURCES
CORPORATION AGAINST NORTHERN
STATES POWER COMPANY D/B/A XCEL
ENERGY FOR VIOLATIONS OF MINN.
STAT. § 216B.01 AND COMMISSION
POLICY

DOCKET NO. G011, G002/C-17-305

RESPONSE TO COMPLAINT

INTRODUCTION

The State of Minnesota and the Commission have long been committed to respecting customer choice in the provision of natural gas service. The customer at issue here—the Minnesota Vikings—selected Xcel Energy as its chosen provider for its new corporate headquarters in Eagan, Minnesota following a competitive bidding process that included the Complainant, Minnesota Energy Resources Corporation (MERC). Not having succeeded in that competitive process, MERC filed this Complaint asking the Commission to disregard the Vikings’ choice and to require the new headquarters to contract with MERC for natural gas service. In support of its complaint, MERC makes a number of policy arguments that are either directly contrary to positions MERC or its predecessor company advanced in past proceedings or directly contrary to well-established Commission precedent. Sometimes they are both.

All of MERC’s arguments are premised upon its provision of service to Northwest Airlines (NWA) at the site of the Vikings’ new headquarters, even though the NWA site has sat largely vacant since 2008. On this basis, MERC argues that the Vikings are somehow MERC’s existing customer, that Xcel Energy would be encroaching upon MERC’s “natural service territory,” and that it would be unsafe or inefficient for Xcel Energy to install pipeline near MERC’s existing pipeline. What MERC fails to mention in its complaint is that Commission precedent plainly states that the new Vikings facility—which is still under construction—does not qualify as any provider’s existing customer. MERC also fails to define “natural service territory” or to provide

any reference to that concept in Commission rules or precedent. Indeed, we have searched past Commission orders and rules, and found no such reference. To the contrary, Minnesota law is clear that there are no assigned service areas for gas utilities. Finally, MERC fails to mention that MERC has itself crossed Xcel Energy's gas main to serve new customers without ever having raised any safety or efficiency concerns like the ones it advances here.

MERC competed for the Vikings' business but did not win it, and now MERC has advanced a meritless complaint that runs counter to their own company's actions, decades of industry practice and Commission precedent. MERC knows it cannot prevail on the merits of its complaint. The complaint is being deployed as a delay tactic meant to force an investigation that will eat into the Vikings' construction schedule and limit their freedom of choice. Commission precedent does not support utilizing the complaint process to subvert customer choice and side-step a full and fair competitive process. Rather, Commission precedent has repeatedly respected customer choice and the competitive process—and it should do so here. For these reasons, and those discussed below, we respectfully request that the Commission dismiss MERC's complaint without further investigation.

PROCEDURAL POSTURE

The Commission reviews formal complaints using a two-step process. In step one; the Commission conducts an initial analysis of the formal complaint by answering two questions:

- Do we have jurisdiction over the complaint?
- Are there reasonable grounds to open an investigation?

If the answer to either question is “no”—the Commission *must* dismiss the complaint without further investigation. In fact, Minn. R. 7829.1800, subpart 1 provides:

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 it lacks jurisdiction or that there is no reasonable basis to investigate the matter, the commission shall dismiss the complaint.

This concept is repeated in Minn. Stat. § 216B.17, Subdivision 1—which provides, “[t]he commission may dismiss any complaint *without hearing* if in its opinion a hearing is not in the public interest.”

In other words, the complaint proceeds to an investigation *only if* the Commission finds that it has jurisdiction to do so *and* concludes that there are reasonable grounds to investigate the allegations.

While we acknowledge that the Commission has jurisdiction over this complaint, we believe that MERC's complaint should nevertheless be dismissed without an investigation based on longstanding Commission precedent, sound policy and decades of industry practice. Indeed, in 1991 and 1996—on facts nearly indistinguishable from those alleged by MERC—the Commission found that no reasonable grounds existed to warrant an investigation, and dismissed the complaint outright, prior to the opening of any investigation. The same result is required here.

FACTUAL BACKGROUND

The Minnesota Vikings are developing a new corporate headquarters and practice facility in Eagan, Minnesota at the site of the former Northwest Airlines headquarters. The NWA site has sat largely vacant since NWA merged with Delta Airlines in 2008 and moved its operations to Atlanta, Georgia. One building remains on the site, but it will be demolished in the near future to make way for the Vikings facilities.

In August 2016, the Vikings, along with their construction partner, Kraus-Anderson, broke ground at their new site. The next month, in September 2016, the Vikings invited Xcel Energy to a meeting to provide a quote for the provision of natural gas service to their new development.¹ We understand that MERC was also invited to, and did, provide a price quote during the same timeframe. After fully considering the competing bids, the Vikings selected Xcel Energy as their preferred natural gas service provider. Pursuant to our bid, the Company will provide natural gas and electric service to the Vikings at tariff rates. Although permitted by statute, we did not flex our natural gas service rates.

As the Vikings' natural gas service provider of choice, we are actively working to coordinate the timing and installation of natural gas and electric facilities with Kraus-Anderson, the City of Eagan, and the Minnesota Department of Transportation. That said, the complaint filed by MERC, if not resolved quickly, may slow the pace of development required to keep the Viking's project on time and on budget.

Another potential threat to the timely advancement of the project is MERC's failure to timely cooperate with the Vikings development. For example, until this week, MERC delayed removing its temporary facilities, which were being used to heat the

¹ In preparing our bid, the Company followed the extension policy outlined in our tariff, and the project did not require a contribution in aid of construction.

construction site. But with the weather warming and construction progressing, Kraus-Anderson requested the removal of the facilities, a request that MERC finally honored this week.

We are excited to serve the Minnesota Vikings, who chose Xcel Energy as the preferred provider for their brand new headquarters after a competitive bidding process. Further, as the Vikings' electric service provider we can bring unique efficiencies to the project, such as joint trenching. We look forward to the quick resolution of this complaint so we can focus on the important business of serving the Minnesota Vikings.

ARGUMENT

The Commission has consistently demonstrated a commitment to respecting customer choice in the provision of natural gas service. Notwithstanding this precedent, MERC asks the Commission to disregard the Minnesota Vikings' choice of Xcel Energy following a competitive bidding process. In support of its request, MERC rehashes a number of policy arguments that are indistinguishable from those that have been considered and rejected by the Commission in past Orders. Yet MERC provides no credible justification for revisiting these precedents. For these reasons, which are discussed further below, we respectfully request that the Commission dismiss MERC's complaint and respect the Minnesota Vikings' choice of natural gas provider.

In 1991, the Commission specifically considered the issue of customer choice in the provision of natural gas service. In *Great Plains Natural Gas Co. v. Peoples Natural Gas Co.*,² Peoples (MERC's predecessor company), was competing with Great Plains for the opportunity to serve Minnesota Corn Processors (MCP), a long-time customer of Great Plains. MCP had decided to convert its manufacturing operations from coal to natural gas and sought expanded natural gas service for that purpose. Both Great Plains and Peoples entered into competitive negotiations with MCP, and MCP ultimately selected Peoples as its provider of choice. Great Plains filed a Complaint and Peoples defended its right to serve MCP. In other words, MERC's predecessor company argued for a result that directly contradicts the relief sought by MERC's current complaint. The material distinction, of course, was that Peoples benefitted from the competitive process in 1991, whereas MERC did not prove to be competitive in this case.

² *In the Matter of the Complaint of Great Plains Natural Gas Company Against Peoples Natural Gas Company and UtiliCorp United, Inc.*, Docket No. G-004, -011/G-91-731, ORDER DISMISSING COMPLAINT (Dec. 20, 1991) (hereinafter *Great Plains Complaint*).

The Commission agreed with Peoples, and dismissed the complaint without opening an investigation. In its well-reasoned Order, the Commission explained:

[T]he complaint rests entirely on the contention that Great Plains has an exclusive right to serve this load. This contention has no basis in law or policy. Minnesota does not have assigned service areas for gas utilities. It does have assigned service areas for electric utilities, which suggests that the Legislature intentionally treated the two types of utilities differently. Peoples, then, is free to serve this new load, in the absence of special circumstances, such as unnecessary duplication of facilities or harm to existing ratepayers, requiring Commission intervention.³

Accordingly, customer choice is only disturbed if special circumstances exist. And special circumstances *do not exist* simply because the new load came from the “long-time customer” of another utility or because the new load is located on same premises as the old load (both of which were true of MCP in the 1991 case).

The second seminal Commission Order came in 1996 and again involved MERC’s predecessor company. In *Peoples Natural Gas Co. v. Northern States Power Co.*,⁴ Peoples—despite having defended its right to compete just five years earlier—had moved into the role of Complainant. In that case, two customers chose Northern States Power Company (NSP) as their preferred natural gas provider and Peoples—like MERC here—argued that special circumstances existed to warrant a Commission investigation.

The facts of *Peoples v. NSP* are strikingly similar to this case. There, as here, the customers chose NSP as its preferred service provider even though the proposed developments were contiguous to an area served by Peoples and not contiguous to areas served by NSP. There, as here, Peoples alleged that by serving the proposed developments, NSP would be unnecessarily duplicating facilities in violation of Minn. Stat. § 216B.01. And there, as here, Peoples urged the Commission to find that the alleged duplication of facilities constituted a special circumstance that necessitated an investigation.

The Commission was not persuaded by Peoples’ arguments. With respect to safety, the Commission found that the Minnesota Office of Pipeline Safety had addressed or would address any safety issues posed by NSP’s planned facilities. Regarding economic concerns, the Commission concluded that “the proper place to analyze the

³ *Id.* at 4 (emphasis added).

⁴ *In the Matter of a Complaint of Peoples Natural Gas against Northern States Power Company regarding its Construction of Distribution Facilities*, Docket No. G-011/C-96/1062, ORDER DISMISSING COMPLAINT (Oct. 21, 1996) (hereinafter *Peoples Complaint*).

economic consequences of redundant piping is in a rate case proceeding.”⁵ Accordingly—and consistent with its 1991 decision—the Commission chose to respect the customers’ choices and dismissed Peoples’ Complaint without further investigation.

The Commission should reach the same conclusion in this case for the same reasons. Not only has MERC failed to allege any facts that would support a different result, but MERC’s past practices and arguments run directly counter to the policy arguments it advances in the current complaint. We address each of those arguments in turn below.

First, MERC contends that “Xcel’s new pipeline must cross over or under MERC’s existing pipeline, presenting significant safety concerns.” In 2001, however, Xcel Energy and MERC submitted bids to serve a large residential development south of Highway 95. The customer chose MERC as its preferred provider and, in order to serve its new customer, MERC built facilities that crossed Xcel Energy’s gas main. MERC did not raise any safety concerns at that time, and their attempt to do so now should be accorded no weight.

Further undermining MERC’s safety argument is the industry response to the Commission’s generic inquiry into competition in the natural gas sector in 1990.⁶ The response shows that Xcel Energy, Minnegasco (now CenterPoint Energy) and Peoples (now MERC) all reported numerous instances of mains that crossed other utilities’ mains and service lines. There was no outcry at that time about the “significant safety issues” raised by the crossing, and MERC’s attempt to generate concern here is, at best, opportunistic (and possibly disingenuous).

Second, MERC contends that respecting the Minnesota Vikings’ choice of provider will result in duplication of facilities and inefficiencies. However, the Commission explicitly concluded in the 1996 Peoples case that these concerns belong in a rate case proceeding rather than a complaint proceeding like this one. Indeed, this issue was also addressed in the Commission’s 1990 inquiry, and after receiving comment from all eight regulated gas utilities and initiating a study group, the Commission concluded that issues of duplication were more appropriately addressed in rate case proceedings.

Third, MERC’s suggestion that the Vikings facilities are somehow not a new customer should also be disregarded. In the Great Plains Complaint, the Commission rejected a

⁵ *Id.* at 4.

⁶ *Generic Inquiry*, Docket No. G-999/CI-90-563, Survey Responses from August 1991. Western Gas Utilities Inc. also identified locations where mains and service lines crossed those of other utilities.

similar argument from Great Plains, which argued that Peoples was improperly poaching an existing customer. The Commission reasoned:

The new load Peoples wants to serve does not yet exist. It will exist only if MCP follows through with its plans to convert its manufacturing operations from coal to natural gas. Great Plains will continue to serve MCP's existing load (office heating) whether or not the conversion occurs. Great Plains is not losing existing load to another utility.⁷

The same is true here. The new load to be served by Xcel Energy will not exist unless the Vikings facilities are actually built. Further, MERC can continue to provide service to the last remaining NWA building (its actual customer) until its demolition. Thus, under established Commission precedent, the Vikings development is plainly a new customer. MERC's suggestion to the contrary—that Xcel Energy is trying to “steal” or “poach” customers away from MERC—should be summarily rejected.

Fourth, MERC uses the term “natural service territory” in its complaint, presumably to suggest that Xcel Energy is somehow encroaching upon that territory in violation of some rule or precedent. The Company, however, has not found any use of this term in Minnesota law, Commission rules, or Commission precedent. To the contrary, as the Commission noted in the Generic Inquiry, there is no statutory prohibition against competition by two or more gas providers in the same territory.⁸ Likewise, in the Great Plains Complaint, the Commission explained, “Minnesota does not have assigned service areas for gas utilities. It does have assigned service areas for electric utilities, which suggests that the Legislature intentionally treated the two types of utilities differently.”⁹ The legislature and Commission have spoken clearly on this issue, and MERC's use of the phrase “natural service territory” makes little sense—and deserves little attention—in light of the actual legal precedent on this issue.

MERC's reliance on the so-called “First in Field” rule is similarly confounding. As with the term “natural service territory,” there is no reference to the “First in Field” rule in Minnesota statutes, Commission rules or Commission precedent. And yet, MERC warns that failing to maintain the “First in Field” Rule will result in a “dangerous precedent.” A cursory review of Minnesota law and Commission precedent proves otherwise.

Finally, MERC's suggestion that respecting the customer choice in this instance would require it to “drastically change its business model” is belied by its own history. Gas

⁷ *Great Plains Complaint* at 4.

⁸ *Generic Inquiry*. See also *Peoples Complaint* at 4 (“... the fact remains that there is no statutory prohibition against competition by two or more gas providers in the same territory.”).

⁹ *Great Plains Complaint* at 4.

utilities have long competed for new customers, and Commission precedent has consistently upheld that practice and supported customer choice. MERC, not Xcel Energy, seeks a change in the status quo, and their attempts to thwart customer choice only when it benefits MERC should be rejected.

CONCLUSION

MERC competed for the Vikings' business but did not win it. As discussed above, Commission precedent supports respect for that competitive process and for the Vikings' choice of provider. We therefore respectfully request that the Commission dismiss MERC's complaint without further investigation.

REQUEST FOR EXPEDITED SCHEDULE

As outlined above, the Minnesota Vikings have a construction schedule that contemplates natural gas service to certain of its facilities by late summer. Moreover, the Vikings have contractual obligations tied to construction milestones that cannot be met if progress on its natural gas service is delayed. Stated another way, time is of the essence and there is very little cushion.

It is for this reason that we respectfully request an expedited comment schedule and attach a formal Motion to Expedite.¹⁰ The Commission, in its April 21, 2017 Notice of Comment, provided seven business days for parties to file reply comments. The Company does not propose to shorten that window; instead, we respectfully request that the seven-day time clock for replies starts to run on Friday, April 28—the actual date of our response—rather than from the Commission's original date of Thursday, May 4 as reflected in the initial Notice of Comment. Under the revised schedule, the reply comment period would close on Tuesday, May 9 and leave open the possibility that this matter could be added to the Commission's regular agenda meeting on May 11, May 18 or—at the latest—May 25. We thank the Commission for its consideration of our request.

Dated: April 28, 2017

Northern States Power Company

¹⁰ See Attachment A.

STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION

Nancy Lange	Chair
Dan Lipschultz	Commissioner
Matthew Schuerger	Commissioner
Katie J. Sieben	Commissioner
John A. Tuma	Commissioner

IN THE MATTER OF A FORMAL
COMPLAINT AND PETITION FOR RELIEF
BY MINNESOTA ENERGY RESOURCES
CORPORATION AGAINST NORTHERN
STATES POWER COMPANY D/B/A XCEL
ENERGY FOR VIOLATIONS OF MINN.
STAT. § 216B.01 AND COMMISSION
POLICY

DOCKET NO. G011, G002/C-17-305

**NOTICE OF MOTION AND
MOTION TO EXPEDITE**

To: Minnesota Energy Resources Corporation (MERC) and all other interested parties as identified on the attached Service List

PLEASE TAKE NOTICE that Northern States Power Company d/b/a Xcel Energy moves the Minnesota Public Utilities Commission to expedite its Notice of Comment Period, issued April 21, 2017, in the above referenced docket, so that reply comments will be due on **May 9, 2017 at 4:30 p.m.**

Concurrent with this Motion—and four days before the deadline contemplated in the April 21 Notice—Xcel Energy filed its Response to MERC’s Complaint. As described in more detail in that response, the Company believes the MERC complaint is meritless and designed to force an investigation that will frustrate the Minnesota Vikings’ construction schedule along with their ability to choose a preferred natural gas service provider. Commission precedent does not support utilizing the complaint process to subvert customer choice and side-step a full and fair competitive process. Moreover, with respect to the two policy issues raised by MERC—safety and economic concerns—the Commission has properly concluded that the former is the charge of the Minnesota Office of Pipeline Safety and the latter falls within the purview of rate case proceedings.

The Commission, in its April 21, 2017 Notice of Comment, contemplated an initial comment period that ended on May 4 and a reply comment period that ended on May 15. Given the customer's need for an expeditious resolution, the Company filed its response on Friday, April 28, four business days before the deadline contemplated in the Notice of Comment Period.

Given that time is of the essence, and because the Company believes that MERC's complaint can be dismissed without further investigation, the Company makes this motion for expedited treatment and respectfully requests the Commission revise its Notice such that the reply comment period will close on Tuesday, May 9—rather than on Monday, May 15.

We note that this change does not shorten the window for those parties seeking to file reply comments and thus does not prejudice them in any way. We are simply requesting that the seven-day time clock for replies start to run on Friday, April 28—the actual date of our response—rather than from the Commission's original date of Thursday, May 4 as reflected in the initial Notice of Comment.

By closing the reply comment period on Tuesday, May 9, the Commission retains the option to schedule this matter for hearing during the Commission's regular agenda meeting on May 11, May 18 or—at the latest—May 25. At that hearing, the Commission would conduct its initial consideration of the complaint, as contemplated by Minn. R. 7829.1800, and answer the following questions:

- Does the Commission have jurisdiction over the complaint?¹
- Are there reasonable grounds to open an investigation?

If the answer to either question is “no”—the Commission *must* dismiss the complaint without further investigation.

The Company does not believe this expedited timeline will prejudice MERC or other interested persons; nor will it cause irreparable harm to the proceeding. The Company thanks the Commission for its consideration of our Motion.

Dated: April 28, 2017

Northern States Power Company

¹ This is an undisputed issue as both parties agree that the Commission does have jurisdiction to hear MERC's complaint.

CERTIFICATE OF SERVICE

I, Carl Cronin, hereby certify that I have this day served copies of the foregoing document on the attached list of persons.

xx by depositing a true and correct copy thereof, properly enveloped with postage paid in the United States mail at Minneapolis, Minnesota

or

xx electronic filing

DOCKET No. G011, G002/C-17-305

Dated this 28th day of April 2017

/s/

Carl Cronin

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_17-305_Official
Lester	Bagley	bagleyl@vikings.nfl.net	Minnesota Vikings	N/A	Electronic Service	No	OFF_SL_17-305_Official
Thomas	Burman	N/A	Stinson Leonard Street LLP	150 S 5th St Ste 2300 Minneapolis, MN 55402	Paper Service	No	OFF_SL_17-305_Official
Carl	Cronin	Regulatory.records@xcelenergy.com	Xcel Energy	414 Nicollet Mall FL 7 Minneapolis, MN 554011993	Electronic Service	No	OFF_SL_17-305_Official
Ian	Dobson	Residential.Utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	Yes	OFF_SL_17-305_Official
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_17-305_Official
Stacy	Kotch	Stacy.Kotch@state.mn.us	MINNESOTA DEPARTMENT OF TRANSPORTATION	395 John Ireland Blvd. St. Paul, MN 55155	Electronic Service	No	OFF_SL_17-305_Official
Allen	Krug	allen.krug@xcelenergy.com	Xcel Energy	414 Nicollet Mall-7th fl Minneapolis, MN 55401	Electronic Service	No	OFF_SL_17-305_Official
Amber	Lee	ASLee@minnesotaenergyresources.com	Minnesota Energy Resources Corporation	2665 145th St W Rosemount, MN 55068	Electronic Service	No	OFF_SL_17-305_Official
Russ	Matthys	matthys@cityofeagan.com	City of Eagan	N/A	Electronic Service	No	OFF_SL_17-305_Official
Brian	Meloy	brian.meloy@stinson.com	Stinson, Leonard, Street LLP	150 S 5th St Ste 2300 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_17-305_Official
Matt	Smith	countyadmin@co.dakota.mn.us	Dakota County	Administration Center 1590 Hwy 55 Hastings, MN 55033-2372	Electronic Service	No	OFF_SL_17-305_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Scott M.	Wilensky	scott.wilensky@xcelenergy.com	Xcel Energy	7th Floor 414 Nicollet Mall Minneapolis, MN 554011993	Electronic Service	No	OFF_SL_17-305_Official
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_17-305_Official