



414 Nicollet Mall
Minneapolis, MN 55401

January 29, 2018

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

—Via Electronic Filing—

RE: RESPONSE TO MINNESOTA ENERGY RESOURCES CORPORATION'S
MOTION TO ADOPT PROTECTIVE ORDER

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
DOCKET NO. G011, G002/C-17-802

Dear Mr. Wolf:

Northern States Power Company, doing business as Xcel Energy, submits to the Minnesota Public Utilities Commission (Commission) this Response to Minnesota Energy Resources Corporation's January 16, 2018 Motion to Adopt [a] Protective Order in the above referenced docket.

We have electronically filed this document with the 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 questions.

Sincerely,

/s/

AMANDA J. ROME
MANAGING ATTORNEY, FEDERAL AND STATE REGULATORY

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 THE FORMAL
COMPLAINT AND PETITION FOR
RELIEF BY MINNESOTA ENERGY
RESOURCES CORPORATION AGAINST
NORTHERN STATES POWER COMPANY
D/B/A XCEL ENERGY

DOCKET NO. G011, G002/C-17-802

**RESPONSE TO MERC'S MOTION TO
ADOPT PROTECTIVE ORDER**

Northern States Power Company, doing business as Xcel Energy, submits to the Minnesota Public Utilities Commission (Commission) this Response to Minnesota Energy Resources Corporation's (MERC) January 16, 2018 Motion to Adopt [a] Protective Order in the above referenced docket. MERC's motion is both premature and unnecessary. It is premature because the Commission has not yet made the required threshold determination as to whether MERC's complaint merits further investigation. It is unnecessary because the Department of Commerce (Department), the Office of Attorney General (OAG), and the Commission have access to the parties' confidential information and can conduct the same analyses that supported the Commission's decision on MERC's prior complaint. For these reasons, we respectfully request that the Commission deny MERC's motion.

The first step in a formal complaint proceeding is the Commission's threshold review to determine (1) whether the Commission has jurisdiction over the complaint; and (2) whether there are reasonable grounds to investigate the allegation. If the answer to either question is "no," the Commission's rules provide that the complaint "shall" be dismissed without further investigation.¹ The Company is not aware of any instance where the Commission permitted a Protective Order prior to making this threshold determination, nor has MERC cited any such precedent in its Motion. In fact, Protective Orders are typically issued by an administrative law judge after the Commission decides to investigate a complaint and refer the matter to the Office of Administrative Hearings. This threshold review process is consistent with civil litigation where plaintiffs must pass through the motion to dismiss phase before they are entitled to conduct discovery. The reason for this is simple: discovery is

¹ Minn. R. 7829.1800.

burdensome and intrusive, and a complaint should be tested for plausibility before parties are required to exchange such information. The same is true here. Because the result of the Commission's threshold review may very well be a dismissal of the complaint without further investigation, the Company strongly opposes the timing of MERC's Motion and believes this alone should be cause for denying it.

Additionally, MERC's Motion is simply unnecessary. In its Motion, MERC states (without any further justification) that it and the Company "should have the opportunity to review one another's Trade Secret Information and Nonpublic Data, and agency analyses incorporating Trade Secret Information and Nonpublic Data." As with MERC's prior complaint against the Company, however, the Department, the OAG, and the Commission all have access to the confidential information from both parties, and the ability to review and perform analyses of both companies' confidential information. Indeed, in its Order dismissing MERC's previous complaint against the Company, the Commission explicitly discussed the analysis the Department had performed and ultimately concurred with its conclusion.²

In this docket, the Department and OAG both filed comments with the benefit of knowing both parties' confidential information, and the Commission can consider that information and analysis in reaching its threshold determination. MERC has not provided a credible reason for why this docket should proceed differently from the prior one or why it needs to review Xcel Energy's confidential information during this preliminary phase. As the Commission surely understands, MERC and Xcel Energy are actively competing for large natural gas customers in Minnesota, and this is the second instance in under a year where a large customer chose to take service from Xcel Energy instead of MERC. Given this competitive landscape, we respectfully object to providing our trade secret, competitively sensitive information to MERC at this stage.

Finally, even if the Commission decides to investigate MERC's complaint, the Company believes any Protective Order issued should be negotiated between the parties to be narrowly tailored to the issues the Commission determines to be in dispute in the investigation and limited to attorneys' eyes only.

Dated: January 29, 2018

Northern States Power Company

² *In the Matter of Minnesota Energy Resources Corporation's Complaint Against Northern States Power Company*, Docket No. G011,G002/C-17-305, ORDER DISMISSING COMPLAINT, REQUIRING FILINGS, AND OPENING INVESTIGATION at p. 6 (July 12, 2017) ("The Department itemized and quantified the economic benefits and burdens flowing to the Vikings, the utilities, and the ratepayers of each utility under scenarios where MERC serves the development or Xcel [Energy] serves the development. Some of this information—in particular, the economic benefits each utility expects to realize from serving the development—is trade secret. Based on its review of the data, including the trade secret information, the Department concluded that the balance of equities did not support displacing Xcel [Energy] as the Vikings' service provider. The Commission concurs")

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-17-802

Dated this 29th day of January 2018

/s/

Carl Cronin
Regulatory Administrator

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Lester	Bagley	bagleyl@vikings.nfl.net	Minnesota Vikings	N/A	Electronic Service	No	OFF_SL_17-802_PUC Official Service List
Thomas	Burman	thomas.burman@stinson.com	Stinson Leonard Street LLP	50 S 6th St Ste 2600 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_17-802_PUC Official Service List
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1800 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_17-802_PUC Official Service List
Carl	Cronin	Regulatory.records@xcelenergy.com	Xcel Energy	414 Nicollet Mall FL 7 Minneapolis, MN 554011993	Electronic Service	No	OFF_SL_17-802_PUC Official Service List
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First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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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_17-802_PUC Official Service List