


Staff Briefing Papers

Meeting Date	December 21, 2017	Agenda Item *4
Company	Northern States Power Company d/b/a Xcel Energy	
Docket No.	E-002/M-17-528	
	In the Matter of the Petition of Northern States Power Company for Approval to Sell 365 Acres of Sherco Land	
Issue	1. Should Xcel Energy's request to sell 365 acres of Sherco land be approved?	
Staff	Jorge Alonso	jorge.alonso@state.mn.us 651-201-2258
	Bob Brill	bob.brill@state.mn.us 651-201-2242

 Relevant Documents	Date
Xcel Energy – Initial Filing	June 30, 2017
Department of Commerce – Comments	August 2, 2017

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I. Statement of the Issue

Should Xcel Energy's request to sell 365 acres of Sherco land be approved?

II. Background

On June 30, 2017 Xcel Energy (Xcel, or the Company) filed a request to sell approximately 50 acres of Sherco land to Northern Metals LLC (Northern Metals) for \$1.25 million and 315.2 acres to Jet Stream LLC (Jet Stream) for \$6.304 million.

III. Parties' Comments

A. Xcel Energy - Initial Filing

1. Background

The land Xcel proposes to sell was previously maintained as a buffer around the Sherco site; however, due to improved environmental controls, the Company concluded that the land is no longer necessary as a buffer.

2. Description of Transactions

Northern Metals is a Minneapolis metal recycling company which, in order to avert an operating permit revocation from the MPCA, reached a settlement with the MPCA and agreed to relocate its facility out of Minneapolis by 2019. If exercised, the terms of Northern Metals' option to purchase 50 acres of land from Xcel include the following:

- In exchange for an escrow deposit of \$60,000, Xcel Energy granted Northern Metals an exclusive option and right to purchase approximately 50 acres of land in Becker, Minnesota for a purchase price of \$25,000 per acre (with the precise acreage to be determined by survey).
- Northern Metals' option is good for 18 months from the Option Agreement's date of February 24, 2017.
- Northern Metals' use of the property will be limited to developing the site for a scrap metal recycling facility, which will involve the relocation of its existing shredder and non-ferrous metal processing operations in Minneapolis.
- The purchase and sale of the land must be closed within 60 days after the date on which the option is exercised.
- Aside from the specific representations and warranties made by Xcel Energy in the Option Agreement, Northern Metals agrees to take the property "as-is, where-is, with all faults" with no right of setoff or reduction in the purchase price.

Jet Stream is a Delaware special purpose entity that, if it elects to exercise its option, intends to develop the Becker land for industrial purposes. As part of this transaction, Xcel Energy and Jet Stream entered into a non-disclosure agreement to govern the exchange of confidential

information during the negotiation process, including Jet Stream's specific intended use for the land. If exercised, the basic terms of Jet Stream's option agreement are:

- In exchange for an escrow deposit of \$100,000, Xcel Energy granted Jet Stream an exclusive option and right to purchase 315.2 acres of land in Becker, Minnesota for a purchase price of \$20,000 per acre for a total price of \$6,304,000. The lower per-acre purchase price reflects the volume of land to be purchased.
- Jet Stream's option is good for one year from the Option Agreement's date of April 28, 2017.¹
- Jet Stream has the right to extend the option period for an additional year, provided that it gives written notice to Xcel Energy at least 90 days prior to the initial expiration date and deposits another \$100,000 with the escrow agent.
- Jet Stream's use of the property will be limited to developing it for commercial or industrial purposes.
- The purchase and sale of the land must be closed within 30 days after the date on which the option is exercised.
- Aside from the specific representations and warranties made by Xcel Energy in the Option Agreement, Jet Stream agrees to take the property "as-is, where-is, with all faults" with no right of set-off or reduction in the purchase price.

3. Standard of Review

Both transactions are governed by Minn. Stat. § 216B.50 which states:

No public utility shall sell, acquire, lease, or rent any plant as an operating unit or system in this state for a total consideration in excess of \$100,000, or merge or consolidate with another public utility or transmission company operating in this state, without first being authorized so to do by the commission. Upon the filing of an application for the approval and consent of the commission, the commission shall investigate, with or without public hearing. The commission shall hold a public hearing, upon such notice as the commission may require. If the commission finds that the proposed action is consistent with the public interest, it shall give its consent and approval by order in writing. In reaching its determination, the commission shall take into consideration the reasonable value of the property, plant, or securities to be acquired or disposed of, or merged and consolidated.

Since Commission approval depends on a showing that the transaction is consistent with the public interest, the Company offered the following:

- The purchase price for each transaction is reasonable and supported by an independent appraisal.

¹ April 28, 2018 is a Saturday, so the option agreement specifies that the option expires on Monday, April 30, 2018.

- The significant net gains will go back to customers as more fully discussed below.
- Both transactions will provide significant benefits to the Becker community and, in fact, are part of an overall economic development effort by Xcel Energy and officials in the Sherburne County area.
- With respect to the Northern Metals transaction in particular, the relocation of Northern Metals’ recycling facility is expected to bring at least 85 jobs to the area.

Xcel also noted that Minn. Rule, part 7825.1800, subp. B requires the Company to provide various detailed information (items A through J) set forth in Minn. Rule, part 7825.1400 for a transfer of property. Since items F through I are relevant to a capital structure filing and are required for investigating the issuance of securities, they do not apply in this instance; therefore, Xcel requested a variance of these filing requirements for purposes of this Petition.

4. Proposed Accounting Treatment for Sales Proceeds

The two tables below show that the estimated net gains will be \$1.22 million and \$6.01 million for the Northern Metals and Jet Stream transactions, respectively.

50 Acres (Northern Metals Option)	
Expected Sales Proceeds	\$1,250,000.00
Book Value	\$11,199.63
Transaction Fees	\$16,168.82
Net Gain	\$1,222,631.55

315.2 Acres (Jet Stream Option)	
Expected Sales Proceeds	\$6,304,000.00
Book Value	\$277,272.40
Transaction Fees	\$11,922.15
Net Gain	\$6,014,805.45

Xcel explained that FERC requires that the gains on the sale be included in FERC account 421.1,² which is excluded from rate-making and not required to be shared with utility customers; however, since the Company proposed passing these gains to ratepayers, Xcel proposed to record this purchase to FERC Account 254,³ until returned to customers.

Since Xcel’s proposal is to refund the gains through the Fuel Clause Adjustment (FCA) mechanism, the Company noted that, in order to effect the refund, it needs a variance to the FCA rules, under the criteria in the Other Variances rules in Minn. Rule, part 7829.3200 which requires the Commission to find that:

- enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- granting the variance would not adversely affect the public interest; and

² FERC account 421.1 is used to record gains on disposition of utility property.

³ FERC account 254 is used to record other regulatory liabilities.

C. granting the variance would not conflict with standards imposed by law.

B. Department of Commerce - Comments

1. Decision Criterion

The Department concluded that the proposed transaction complies with Minn. Stat. § 216B.50 and is in the public interest for four reasons:

- the purchase price for each transaction is reasonable and supported by an independent appraisal;
- given the significant gains that will result from these sales along with the many years this land has been in-service, Xcel intends to pass all of the net gains back to customers;
- both transactions will provide significant benefits—including substantial capital investment, increased tax base, and at least 85 jobs—to the Becker community; and
- the relocation of Northern Metals' recycling facility will facilitate the settlement between Northern Metals and the Minnesota Pollution Control Agency.

2. Variance Requests

The Department agreed with the Company that items F through J under Minnesota Rule, part 7825.1400 are not required in this proceeding and recommended that requested variance be approved.

The Department noted that, in order to refund the net gains through the FCA mechanism, variances to the FCA rules in Minnesota Rules, parts 7825.2500 and 7825.2600, subpart 2 are also required.

Minnesota Rule, part 7825.2500 states, in part:

Provisions for automatic adjustment of charges must encompass:

A. Changes in cost resulting from changes in the federally regulated wholesale rate for energy purchased and changes in the cost of fuel consumed in the generation of electricity. This provision is entitled electric energy adjustment.

Minnesota Rule, part 7825.2600, subpart 2 states, in part:

The adjustment per Kwh is the sum of the current period cost of energy purchased and cost of fuel consumed per Kwh less the base electric cost per Kwh.

In recommending the approval of the two additional variances under the criteria in Minn. Rule, part 7829.3200, the Department concluded that:

- If the Commission does not approve a variance the Company will be unable to flow the gains from the transaction through to ratepayers, unnecessarily increasing customer costs.
- The requested variance is in the public interest due to the anticipated cost savings and because all parties involved support the proposed transaction.
- The variance would not violate any standards imposed by law.

The Department also recommended that the proposed land sales be approved according to the terms and conditions stated in their respective option agreements.

IV. Staff Comments

In its initial filing, Xcel explained that both transactions were based on an appraisal⁴ performed by the firm Patchin Messner Dodd & Brumm (PMDB). After its review of the appraisal, Staff had concerns that four of the six properties used as comparables were located in Columbus, MN, Faribault, MN (two properties) and Jordan, MN. Since those four properties are not near the Sherco land, Staff met with Xcel and asked the Company to confirm that there are no other similarly-sized parcels of land that could have been used for comparison. Xcel did confirm this was true. Xcel's response also confirmed PMDB's statement that, although there is an abundance of industrial lots available in Sherburne and Wright Counties,⁵ those lots are not large enough to provide the Sherco land's large scale industrial development potential.⁶ While Staff would have preferred all comparable properties to be closer to the Sherco land, market forces did not facilitate such comparison.

Finally, Staff takes exception to the Company's assertion that, despite its intention to return the net proceeds to ratepayers, it was not required to do so.⁷ It is Staff's understanding that the Sherco land being sold was originally paid for by ratepayers, has been included in rate base; therefore, ratepayers would have been entitled to a refund of the net proceeds.

⁴ Attachment C contains a copy of the full appraisal.

⁵ Sherco land is located in Sherburne County which is adjacent to Wright County.

⁶ Attachment C, page 23.

⁷ The Department did not challenge this assertion.

V. Decision Options

Northern Metals Sale

1. Approve the sale of 50 acres of Sherco land to Northern Metals and allow the Company to refund the transaction's net gains through the FCA. (Xcel, DOC)
2. Do not approve the sale of 50 acres of Sherco land to Northern Metals.

Jet Stream Sale

3. Approve the sale of 315.2 acres of Sherco land to Jet Stream and allow the Company to refund the transaction's net gains through the FCA. (Xcel, DOC)
4. Do not approve the sale of 315.2 acres of Sherco land to Jet Stream.

Variance to Minnesota Rule, part 7825.1400

5. Grant a variance to Minn. Rule, part 7825.1400. (Xcel, DOC)
6. Take no action. (DOC)

Variance to the Fuel Clause Adjustment (FCA) rules

7. Grant a variance to Minn. Rules, parts 7825.2500 and 7825.2600, subpart 2 to allow Xcel to return the net gain on these two transactions to rate payers through Xcel's FCA mechanism. (Xcel, DOC)
8. Do not grant Xcel's requested variance. Require Xcel to use deferred accounting to establish a regulatory liability to account for the two transactions.

FERC Account

9. Approve Xcel's request to record net proceeds on FERC Account 254. (Xcel)
10. Deny Xcel's request to record net proceeds on FERC account 254 and require the Company to record the net proceeds on FERC Account 421.1.

Compliance Items

11. If Northern Metals and/or Jet Stream exercise their options and the sales close, require Xcel to file final journal entries for these transactions within 60 days. (DOC)
12. If Northern Metals and/or Jet Stream exercise their options and the sales close then, within 60 days of the net gains being refunded, require Xcel to make a compliance filing detailing how and when the refund(s) was effected. (DOC)