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May 22, 2017

—Via Electronic Filing—

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

RE: COMMENTS  
COMMISSION INQUIRY INTO THE CREATION OF A COMMISSION  
SUBCOMMITTEE UNDER MINN. STAT. §216A.03, SUBD. 8  
DOCKET NO. E999/CI-17-284

Dear Mr. Wolf:

Northern States Power Company, doing business as Xcel Energy, submits the enclosed Comments in response to the Commission's April 17, 2017 Notice of Comment Period in the above-mentioned docket.

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 Amber Hedlund at [amber.r.hedlund@xcelenergy.com](mailto:amber.r.hedlund@xcelenergy.com) or (612) 337-2268 if you have any questions regarding this filing.

Sincerely,

/s/

AMY A. LIBERKOWSKI  
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Enclosure  
c: Service List

STATE OF MINNESOTA  
BEFORE THE  
MINNESOTA PUBLIC UTILITIES COMMISSION

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Dan Lipschultz	Commissioner
Matthew Schuerger	Commissioner
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IN THE MATTER OF A COMMISSION  
INVESTIGATION INTO THE CREATION OF  
A COMMISSION SUBCOMMITTEE UNDER  
MINN. STAT. §216A.03, SUBD. 8

DOCKET NO. E999/CI-17-284

**COMMENTS**

**INTRODUCTION**

Northern States Power Company, doing business as Xcel Energy, submits these Comments in response to the Commission's April 17, 2017 Notice of Comment Period in the above-mentioned docket.

In these Comments, we address the Commission's questions regarding the proposal to establish a Commission subcommittee under Minn.Stat. § 216A.03, subd. 8 to handle distributed generation (DG) and solar issues. According to the Staff proposal, the main reason to establish such a DG subcommittee would be to create a more efficient and faster way to issue decisions in repeated, undisputed matters, unresolved complaints submitted to the Consumer Affairs Office (CAO), or other smaller matters that do not involve high level policy considerations.

The Company appreciates the Commission's desire to explore a practical way of addressing its heavy workload, and establishing a DG subcommittee may be a reasonable approach to create needed efficiencies. However, since the Staff proposes to expand the scope of issues to be addressed by the subcommittee to other than uncontested or undisputed issues, we believe it is increasingly important to pay attention to the details of the subcommittee procedures and due process safeguards. We suggest the Commission take an iterative, initially narrow approach by first limiting the scope of matters to a smaller number of clearly defined issues. As the DG subcommittee gains experience and lessons are learned along the way, the Commission will be better informed to make any further adjustments to the process or to expand the scope of issues to other matters. Our suggestion is to initially limit

the scope of the subcommittee action to uncontested proceedings only and follow the guidance of Minn. R. 7829.1050 for the subcommittee for uncontested matters.

## COMMENTS

The Commission's consideration of when, or under what circumstances, a DG subcommittee should be established, at a minimum needs to consider the range of options given in existing law and rules. Specifically, the Commission should consider the requirements in the subcommittee statute (Minn. Stat. § 216A.03, subd. 8), its own rule on delegation of uncontested matters to a subcommittee (Minn. R. 7829.1050), restrictions on ex parte communications (Minn. Stat. § 216A.037 and Minn. R. 7845.7000, et seq.), and requirements under the open meeting law (Minn. Stat. § 13D.01, et seq.). It is unclear whether the Staff proposal on DG subcommittee, as included in Attachment A to the Commission's Notice, takes into account all the limitations set forth in Minn. Stat. § 216A.03, subd. 8.

Although we believe the overall goal of using some form of a DG subcommittee process to manage the Commission workload is reasonable, many details of the subcommittee process must be developed further so that ex parte communication and open meeting laws are respected and participants' due process rights safeguarded. In this respect, the Staff proposal would benefit from more details that could emerge or more experiences with this process. Given the fact that there has been relatively little use of the subcommittee process, we suggest starting with a limited roll-out and being restricted to uncontested matters as detailed in Minn. R. 7829.1050.

### **A. Scope of Issues that Can Be Delegated to a Subcommittee**

In general, the Staff proposes that the subcommittee process is limited to issues that do not require high-level policy considerations and do not involve significant interpretation of statute, rule, order, or tariff because the interpretation of the material is relatively clear. In addition, the Staff states that "priority would be given to disputes that have come up repeatedly and are affecting multiple parties." The Staff also proposes that the subcommittee could take action in complaints filed with the CAO where it is fairly clear that a non-violation or a violation exists.

We have several comments regarding the scope of issues that could be handled by the subcommittee. First, the Commission has previously addressed implementation of Minn. Stat. § 216A.03, subd. 8 when it established a subcommittee to handle uncontested cases under Minn. R. 7829.1050. This rule states as follows:

***7829.1050 UNCONTESTED PROCEEDING SUBCOMMITTEE.***

Subpart 1. **Delegation of uncontested proceedings.** As authorized by Minnesota Statutes, section 216A.03, subdivision 8, the commission may establish by order a subcommittee to act on uncontested proceedings. The subcommittee will act on behalf of the commission only when:

- A. commission staff determines a proceeding involves no disputed or novel issues; and
- B. no party, participant, or commissioner has requested that the proceeding not be delegated to a subcommittee.

The commission will maintain on its Web site a list of all proceedings delegated under this subpart, and will indicate the subcommittee's disposition for each proceeding. Service of an order reflecting disposition by the subcommittee constitutes receipt by the parties, participants, and commissioners for the purposes of Minnesota Statutes, section 216A.03, subdivision 8, paragraph (b).

Subpart 2. **Other subcommittees.** This part does not limit the circumstances under which the commission may delegate other functions to a subcommittee.

This rule does not foreclose the subject matter of the types of issues that may be sent to a subcommittee, but instead limits itself to setting up a process for delegating “uncontested” matters, which are defined as “involving no disputed or novel issues” and for which no party requested that the proceeding not be delegated. This rule makes sense and creates efficiency as it is limited to uncontested matters.

The Staff proposal regarding the DG subcommittee contemplates expanding the scope of issues to possibly including matters that cannot be considered uncontested or undisputed, such as CAO complaints and repeated issues that are affecting multiple parties<sup>1</sup>.

While Minn. Stat. § 216A.03, subd. 8 does not limit the subcommittee process to certain types of issues, we do not believe it makes sense from a practical standpoint to refer contested matters to the subcommittee at this time because any party, if unsatisfied with the decision of the DG subcommittee, can then file an objection and the matter would be heard by the full Commission. In this situation, the referral to the DG subcommittee would consume more Commission resources and result in further delays until there would be resolution, compared to a situation where there was no delegation to the DG subcommittee.

Second, there is another reason to limit the initial scope of subcommittee delegation to a well-defined set of undisputed issues. A narrower scope of issues would provide a

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<sup>1</sup> See Commission's April 17, 2017 Notice of Comment Period, page 3, in this docket.

trial period for learning and evaluation, with an opportunity to implement future modifications and adjustments based on lessons learned.

Third, it seems that the Staff's main concern that prompted the DG subcommittee proposal is related to informal complaints, including those made to CAO, and questions from customers, utilities, and the public. These complaints and inquiries may involve repeated issues, because the Staff may question its authority to provide definite, binding advice and clarification. However, these types of issues also cover a wide range of subject matters and are often times by nature contested and disputed issues. In our opinion, the DG subcommittee may not be the best option to handle matters from such a wide pool of informal, yet disputed issues. Some of the matters may also be so minor or trivial that they do not warrant a decision by a Commissioner, and would in fact create additional work.

Finally, we note that the Staff proposal or the statute do not address to what extent is precedent or weight applied to decisions of the subcommittee that are not appealed to the Commission. If the subcommittee decisions are limited to uncontested matters and do not involve novel issues, then this is unlikely to become a concern. But, if the scope of delegation is expanded to disputed matters or issues that are novel, then subcommittee decisions could send mixed or conflicting signals to other interested parties. Some may view a quick subcommittee decision as setting a Commission precedent, while others may think such a decision implies weaker authority and should only apply to the facts stated in that particular proceeding.

We believe there are many periodical routine filings where the DG subcommittee can have an immediate and beneficial outcome, such as standard tariff or rate calculation filings. For example, in January 2017 many parties filed their annual co-generation petitions in Docket No. E999/PR-17-9. Over the prior 30 years, a process was used to allow the proposed, uncontested rate changes to go into effect on April 1. But to provide for more Commission oversight, it is now required that a Commission order is issued before the updated rates can be implemented (this change was made by **ORDER OPENING INVESTIGATION, DELEGATING AUTHORITY, AND FINDING THAT TARIFFS MUST BE APPROVED BEFORE BECOMING EFFECTIVE**, June 27, 2016, Docket No. E-999/PR-16-09). From the Company's perspective, we believe matters including routine compliance filings or annual updates to approved rate structures may benefit from the increased efficiency of a process as contemplated by the Staff proposal.

## **B. Composition and Term of the DG Subcommittee**

The Staff proposal does not elaborate on the composition of the subcommittee, but states that "the Commission appoints members, including at least one Commissioner,

to the subcommittee.” Currently, the Commission subcommittee that handles uncontested proceedings consists of one Commissioner.

It is our understanding that the subcommittee would be comprised of one Commissioner with the assistance of Staff. We believe it would be beneficial if the Commissioners initially rotate and serve on the DG subcommittee for a relatively short period of time, perhaps 4-6 months. This way, all Commissioners will gain first-hand experience, understand the risks and benefits of the DG subcommittee process, and are fully informed to make improvements to the process.

### **C. Referral to the DG Subcommittee**

The subcommittee statute allows a “party” or a “participant” in its initial or reply filings in a Commission proceeding to request that the matter not be delegated to the subcommittee. If there is such a request, the Commission must grant that request. In our view, with this wording the statute requires that delegation of matters to the subcommittee be made on a docket-specific basis. While the Commission is authorized to set up a permanent DG subcommittee, we believe the statute requires that at least a notice be issued in each specific docket or proceeding where the Commission intends to delegate a matter to the DG subcommittee. This notice of intent to assign all or some portion of a specific docket to the DG subcommittee should also include a schedule for initial and reply filings. If any party or participant objects to the assignment to the DG subcommittee, then by statute that objection must be honored.

The current Staff proposal does not appear to take this approach into full consideration. Instead, it seems to contemplate that somehow, without a public hearing, the Commission (or the CAO) will determine if a proceeding falls within the authority of the DG subcommittee and then that proceeding would automatically be sent to the DG subcommittee. While being a prompt process, we believe this process would be inconsistent with the subcommittee statute or transparency requirements.

### **D. Other Procedural Considerations**

The Staff proposal does not clarify whether the DG subcommittee proceedings will be “paper only” proceedings, or whether there will be in-person discussions or hearings with the subcommittee. At this point, we believe there may be benefits if the subcommittee has the discretion to decide on a case-by-case basis whether any type of in-person meeting is needed. However, if any such discussions or hearings take place, they should be recorded or transcribed.

According to the statute, a decision by a subcommittee must be referred to the full Commission if any party, participant, or Commissioner files an objection within ten days of the written decision. The Staff proposal is unclear on the standard of review that is used by the Commission when a party objects to a subcommittee decision. The proposal refers to this objection as a party seeking “reconsideration” of a subcommittee decision. However, the standard of review for “reconsideration” or rehearing under Minn. Stat. § 216B.27 is specific and requires that the applicant contends that the grounds of the Commission decision can be considered unlawful or unreasonable.

Our understanding is that an objection to a subcommittee decision initiates a complete review and analysis by the Commission: “If referred to the full commission, the full commission may rely on the record developed by the subcommittee but shall treat the subcommittee decision as advisory.” (Minn. Stat. § 216A.03, subd. 8(b)). If any appeal is taken to the Commission, the “reconsideration” standard should not apply.

When the Commission undertakes any such review of a DG subcommittee decision, it also must act consistently with the pertinent ex parte rules and open meeting law requirements. Based on the statute (Minn. Stat. §216A.037), the Commission has established rules relating to ex parte communications in Minn. R. 7845.7000, et seq. Further, it is unclear how the state’s open meeting law requirements (Minn. Stat. §13D.01, et seq.) would be upheld under the Staff proposal. It would be helpful to understand how this will work in light of these rules and requirements. There may need to be further considerations on what safeguards should be put in place to help ensure that these laws and processes are respected. This is important because there may be situations in which a Commissioner on the DG subcommittee may need to be recused so as not to be part of a full Commission hearing on the appeal of the subcommittee decision.

## **E. CAO Matters**

It appears as though a major emphasis in the Staff proposal is to address disputes pending before the CAO or information inquiries to the Staff. The proposal indicates that there may be a number of disputes or inquiries that the CAO or Staff cannot address even though the interpretation of the material is relatively clear. According to the Notice, the CAO or Staff are simply “unable to issue definitive advice and clarification” and the same type of issue may repeat itself because of the lack of a definitive result to a prior similar situation. Perhaps part of the efforts here should be to better define what the role of the CAO is or can be. One possibility would be to formalize the CAO process so parties are aware of the CAO’s authority.

## **F. DG Subcommittee Evaluation and Lessons Learned**

Regardless of what type of DG subcommittee process is implemented, there should be a planned evaluation and review period to examine lessons learned and necessary adjustments. We suggest that the initial review and information gathering take place during the first 12 months of the DG subcommittee's operation. The review should include a plan for a systematic evaluation, identifying the goals and results that are examined, listing the information and data that will be collected, and discussing how the data is tied to the results and helps to answer whether the goals were met.

The evaluation could address the following types of goals/results:

- Were the issues handled by the DG subcommittee the right type of matters in order to create efficiencies (not too minor or trivial; not too complicated or novel)?
- Has the DG subcommittee reduced the workload of the Commission?
- Has the DG subcommittee taken matters that were never before handled at the Commission-level?
- Has the DG subcommittee reduced the workload of the CAO/Commission Staff?
- Has the occurrence of repeated issues in informal complaints/inquiries reduced?
- In how many cases did participants request transfer from the DG subcommittee to full Commission process?
- How many DG subcommittee decisions were “appealed” to the Commission?
- What type of due process concerns were raised and how often?
- What type of ex parte communications or open meeting law concerns were raised and how often?
- Was the DG subcommittee process faster or otherwise more efficient than the regular Commission process?
- What are the other lessons learned?
- What are the suggestions for improvements and adjustments (e.g., scope of issues, process, etc.)?



## CONCLUSION

We appreciate the opportunity to provide comments to the Commission regarding the Staff proposal to establish a DG subcommittee. We believe a DG subcommittee may be a reasonable way to create needed efficiencies, however, this depends on the scope of issues, details of the subcommittee procedures, and due process safeguards in place. In addition, there should be further consideration regarding compliance with ex parte communication and open meeting laws. We suggest that the authority of the DG subcommittee be initially limited to undisputed matters only. A narrower scope of issues would provide a trial period for learning and evaluation, with an opportunity to implement future modifications and improvements based on lessons learned.

Dated: May 22, 2017

Northern States Power Company

## CERTIFICATE OF SERVICE

I, Jim Erickson, 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

xx electronic filing

**Docket No.        E999/CI-17-284**

Dated this 22<sup>nd</sup> day of May 2017

/s/

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David	Gruenes	dgruenes@stearnselectric. org	Stearns Electric Association	PO Box 40  Melrose, MN 56352	Electronic Service	No	OFF_SL_17-284_Official
Timothy	Gulden	info@winonarenewableene rgy.com	Winona Renewable Energy, LLC	1449 Ridgewood Dr  Winona, MN 55987	Electronic Service	No	OFF_SL_17-284_Official
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Tony	Hainault	anthony.hainault@co.henn epin.mn.us	Hennepin County DES	701 4th Ave S Ste 700  Minneapolis, MN 55415-1842	Electronic Service	No	OFF_SL_17-284_Official
James	Haler	jhaler@southcentralelectri .com	South Central Electric Association	71176 Tiell Dr P. O. Box 150 St. James, MN 56081	Electronic Service	No	OFF_SL_17-284_Official
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First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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Ronald	Horman	rhorman@redwoodelectric.com	Redwood Electric Cooperative	60 Pine Street  Clements, MN 56224	Electronic Service	No	OFF_SL_17-284_Official
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First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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