STATE OF MINNESOTA
FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger	Chair
David C. Boyd	Commissioner
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
Betsy Wergin	Commissioner

In the Matter of the Petition of Northern States Power Company d/b/a Xcel Energy for Approval of Competitive Resource Acquisition Proposal

In the Matter of a Draft Power Purchase Agreement with Geronimo Wind Energy, LLC d/b/a Geronimo Energy

Docket Nos. E-002/CN-12-1240 and E-002/M-14-788

GERONIMO ENERGY'S COMMENTS AND REQUEST FOR APPROVAL OF AND COST RECOVERY FOR THE AURORA PPA

INTRODUCTION

Geronimo Wind Energy, LLC, d/b/a Geronimo Energy, LLC ("Geronimo") provides these comments in response to the Commission's September 25, 2014 Notice Seeking Comments in the above-referenced dockets. In its Notice, the Commission requested comments regarding:

- Is Xcel's filing and the accompanying recommendation reasonable, including the Company's request to delay the in-service dates of the thermal power purchase agreements?

Geronimo respectfully requests that the Commission approve the Solar Energy Purchase Agreement ("PPA" or "Aurora PPA") included as part of Northern States Power Company d/b/a Xcel Energy's ("Xcel") September 23, 2014 Compliance Filing ("Compliance Filing") and find that the PPA is reasonable and in the public interest and complies with the Commission's May 23, 2014 Order Directing Xcel to Negotiate Draft Agreements with Selected Parties in Docket No. E002/CN-12-1240 (the "Order"). In addition, to ensure that, upon Commission approval, the PPA is fully enforceable, Geronimo requests that the Commission allow Xcel to recover 100% of the costs incurred under the PPA from its retail customers in Minnesota. Geronimo disagrees with Xcel's suggestion that the Aurora PPA should only be considered in the context of a review of PPAs Xcel has yet to negotiate as part of its SES RFP and believes the suggestion is wholly unreasonable and directly contrary to the Commission's Order.

To ensure the Commission has an adequate record upon which to evaluate whether the terms of the Aurora PPA are in the public interest, this filing discusses the terms of the Aurora PPA typically analyzed by the Minnesota Department of Commerce, Division of Energy Resources, and the Commission in other PPA approval proceedings.

PROCEDURAL HISTORY

On March 5, 2013, in Xcel's 2011-2025 Integrated Resource Plan docket (Docket No. E002-RP-10-815), the Commission found that Xcel demonstrated the need for an additional 150 megawatts ("MW") of capacity by 2017, increasing up to 500 MW by 2019. Accordingly, in Docket No. E002/CN-12-1240, the Commission solicited proposals to meet some or all of Xcel's needs.

On April 15, 2013, the Commission received competitive resource proposals from five bidders, including Calpine Corporation ("Calpine"), Geronimo, Great River Energy ("GRE"), Invenergy Thermal Development, LLC ("Invenergy") and Xcel. The competitive resource proposals consisted of multiple proposals: four non-renewable resource proposals from Calpine, GRE, Invenergy, and Xcel and one renewable resource solar proposal from Geronimo (hereinafter, the "Aurora Project" or "Project").

On June 21, 2013, the Commission issued an order referring this matter to the Office of Administrative Hearings for a contested case proceeding.

Administrative Law Judge ("ALJ") Eric L. Lipman conducted a contested case proceeding. In the contested case proceeding, Xcel argued that any acquisition of solar energy resources should be deferred to a solar-only request for proposals ("RFP") to meet the Solar Energy Standard ("SES"). Geronimo opposed Xcel's argument, asserting instead that its proposal must be evaluated in this docket, rather than being deferred to a SES RFP. Geronimo noted that it had submitted its proposal for the Aurora Project into this competitive resource acquisition process before the Minnesota legislature adopted the SES. Geronimo did so because the technology, pricing, and environmental attributes of solar generation are superior to non-renewable alternatives, regardless of whether Xcel uses the Aurora Project to meet its SES requirements under Minn. Stat. § 216B.1691, subd. 2(f).[1]

The ALJ agreed with Geronimo. On December 31, 2013, the ALJ issued his Findings of Fact, Conclusions of Law, and Recommendation. The ALJ stated that "the greatest value to Minnesota and Xcel's ratepayers is drawn from selecting Geronimo's solar energy proposal" because it offered "competitively-priced energy generation; at firm prices; the fewest new environmental impacts; and significant protections against the imposition of project cancellation costs."[2] The ALJ further stated that "Geronimo entered this bidding process as the sole renewable technology and beat competing offerors on total life-cycle costs. It deserves the application of the statutory preference [in favor of renewable energy sources]."[3] The ALJ recommended that the Commission select Geronimo's Aurora Project, select GRE's proposal if additional capacity beyond 71 MW is needed, and direct Xcel to negotiate PPAs with the selected offerors.

[1] *E.g.*, Geronimo's Reply Brief at p. 7, Docket No. 12-1240 (Dec. 6, 2013).

[2] Findings of Fact, Conclusions of Law, and Recommendation ("ALJ Order") at p. 47, Docket No. 12-1240 (Dec. 31, 2013).

[3] ALJ Order at p. 48.

On March 25 and 27, 2014, the Commission met to consider this matter, and, on May 23, 2014, the Commission issued its Order. The Commission found as follows:

- Geronimo's proposal provides an appropriate choice for meeting a portion of Xcel's reliability and adequacy needs, and to fulfill the state's energy policies; and
- Calpine's proposal, Invenergy' s Cannon Falls proposal, and Xcel's Black Dog proposal may also provide appropriate choices for Xcel to meet a portion of its reliability and adequacy needs and to fulfill the state's policies.

Accordingly, the Commission ordered, in relevant part, as follows:

- Xcel shall negotiate a draft power purchase agreement with Geronimo and submit the agreement for Commission review to ensure that the negotiated terms are consistent with the public interest.
- Xcel shall negotiate draft power purchase agreements with Calpine and Invenergy and shall develop price terms for Black Dog Unit 6. Xcel shall then submit the agreements for Commission review to determine which project(s), if any, best addresses Xcel's overall system needs identified in this record.
- Calpine, Geronimo, Invenergy, and Xcel shall be held to the prices and terms used to evaluate each bid. If actual costs are lower than the bid, the bidders are allowed to keep those savings.

No party sought rehearing and/or reconsideration of the Commission's Order within the 20-day deadline to do so. Similarly, no party appealed the Order.

On May 28, 2014, Geronimo formed Aurora Distributed Solar, LLC ("Aurora"). Geronimo later sold all membership interests in Aurora to Enel Green Power North America, LLC ("Enel") for the purpose of owning and operating the Project.

On September 23, 2014, Xcel submitted a compliance filing that included an updated resource need assessment, draft PPAs with Calpine, Invenergy and Geronimo, and Xcel's Black Dog Unit 6 pricing. Xcel asserted that it "received competitive pricing on a range of solar proposals" in Docket No. E-002/M-14-162 (the "Solar RFP"). Consequently, Xcel argued that the Commission should consider the PPAs Xcel developed through the Solar RFP process in the Commission's public interest determination of the Aurora solar project.

ANALYSIS

I. THE COMMISSION SHOULD APPROVE THE XCEL-AURORA PPA.

In its Order, the Commission selected the Aurora Project to meet a portion of Xcel's needs and, in addition, stated that one or more thermal proposals may be selected depending on the final negotiated terms of the thermal PPAs. The Order also held all bidders to their bid

prices. With regard to the Aurora PPA, the Order stated that review of the PPA is intended to focus on whether the terms of the PPA are in the public interest. Aurora (or "Seller") and Xcel negotiated a PPA, based on the same form Xcel proposed in its Solar RFP, that meets all requirements of the Order and the public interest factors typically reviewed by the Commission. For these reasons, the Aurora PPA should be approved. This section describes key terms of the PPA supporting a public interest determination.

A. Project Description.

As established through the contested case process, the Aurora Project is designed to provide distributed solar energy to meet Xcel's need for additional capacity in the 2017 to 2019 timeframe. The Project consists of distributed photovoltaic ("PV") solar generating systems and associated facilities totaling 100 megawatts ("MW") alternating current ("AC") nameplate capacity, to be located at up to 24 facilities interconnected to Xcel distribution stations. The locations of the facilities were chosen to improve the reliability of the distribution system in the area of each site. The distributed solar facilities range in size from 1.5 MW to 10 MW in generating capacity and will utilize linear axis tracker systems. The Project is to be placed in service by the end of 2016 with the flexibility to bring a portion online in 2015 to meet demand and construction schedules, as warranted. The Project will also provide MISO accredited capacity, consistent with Geronimo's bid, and supply Xcel with approximately 200,000,000 kilowatt hours (kWh) annually. The geographic dispersion of the Aurora Project increases its reliability, because the total project will be less susceptible to outages due to equipment failure or transmission outage. Because each facility will be interconnected at a distribution substation, the Project will experience substantially lower losses than most conventional power plants. In addition, the distribution level interconnections will have less lead time, lower risk, and lower cost than typical transmission interconnections. The solar energy produced by the Aurora Project can also be used by Xcel to meet its obligations under the Minnesota SES (Minn. Stat. § 216B.1619, subd. 2(f)).

B. Summary of the PPA.

In the course of negotiations, the parties agreed to use Xcel's Model Solar PPA with Aurora's bundled per MWh capacity/energy price payment structure. The parties negotiated a single PPA structure covering all sites (or "phases"), while recognizing the possibility the PPA may be split into a maximum of three separate PPAs as needed post-commercial operation date ("COD") for tax equity financing purposes. Should the PPA be split, each phase is treated as a separate project pre-COD, and Xcel may not terminate a single PPA because of any action or inaction of a particular phase that occurs prior to COD. Xcel does retain, however, pre-COD global default and termination rights for bad acts and defaults by Aurora.

The maximum nameplate capacity Aurora may deliver under the PPA is capped at 100 MW AC, and Aurora has the discretion to determine which of the sites it will bring to COD to deliver capacity up to the maximum nameplate capacity.

C. PPA Design.

1. Purchase Price & Terms.

Xcel will purchase the entire output of the Aurora Project over a 20-year term following the COD. Consistent with Geronimo's bid, the price of the energy and other services provided by the Project to Xcel is **[TRADE SECRET DATA HAS BEEN EXCISED]**, as illustrated in Table 1 below. Energy production prior to the COD can commence from phases on and after June 1, 2015 and any such energy produced by those phases following that date and prior to September 1, 2016 will be purchased by Xcel at a rate equal to the price per MWh for energy in the MISO day-ahead market at the pricing node designated as nsp.nsp (or such reasonable and mutually-agreed successor pricing node), less $2 per MWh. Energy production occurring during the limited period from September 1, 2016 until the COD will be purchased by Xcel at a rate equal to 70% of the payment rate applicable as of the COD (i.e. 70% of **[TRADE SECRET DATA HAS BEEN EXCISED]**).

The initial estimated annual committed energy amounts are illustrated in Table 1 below, which are Aurora's estimates as of the Effective Date based upon a 100 MW (AC) Project. Promptly following confirmation of the final phase to be included in the Project, the final annual committed energy amounts will be provided based upon the Project as completed.

Consistent with Geronimo's bid, the Project will also provide Xcel with certain amounts of accredited capacity, as illustrated in Table 1 below. The accredited capacity amounts described in Table 1 below include a customary annual degradation factor of 0.50% described in Geronimo's bid and assume a full 100 MW AC Project. The actual accredited capacity amount for the Project during a commercial operation year will be the larger of the amounts determined according to either the current MISO accredited capacity testing requirements and methods, or the MISO testing requirements and methods in existence and used at the time of testing to determine accredited capacity for solar generation facilities (each taking events of curtailment into account).

To address paragraph 2.B of the Order, in the event the Project fails to achieve a corresponding accredited capacity for a given commercial operation year following the first anniversary of the COD, then Xcel shall be entitled to receive damages in an amount equal to **[TRADE SECRET DATA HAS BEEN EXCISED]** of the shortfall for each month in which a capacity shortfall exists. This amount is **[TRADE SECRET DATA HAS BEEN EXCISED]**. To the extent that the accredited capacity exceeds the amounts in Table 1 below, Xcel will receive the benefit of the additional capacity at no additional cost.

Table 1

Commercial Operation Year	Committed Solar Energy (kWh)[4]	Rate $/(MWh)	Accredited Capacity (AC MW)	Commercial Operation Year	Committed Solar Energy (kWh)	Rate $/(MWh)	Accredited Capacity (AC MW)

[**TRADE SECRET DATA HAS BEEN EXCISED …**

… TRADE SECRET DATA HAS BEEN EXCISED]

The PPA also includes a Right of First Offer for Xcel and notice rights for Xcel with respect to a Pending Facility Transaction ("PFT").

2. Commercial Operation Date.

The COD will occur on the earlier of December 31, 2016 and the date that the Seller provides notice to Xcel that it has completed phases sufficient for the Seller to declare COD for the Project as a whole. However, COD cannot be declared earlier than September 1, 2016. Each phase to be included in the Project will be confirmed as complete through a declaration notice procedure between the parties.

3. Security.

To mitigate financial risks, the PPA includes an initial pre-COD security provision in the amount of **[TRADE SECRET DATA HAS BEEN EXCISED]** from which Xcel may draw. The security fund will be established and can be fully funded through one of two methods – either by cash or letter of credit within 30 days of regulatory approval from the Commission. The pre-COD security fund will remain in place in such amount until the earlier of COD or the date that Seller pays any required pre-COD liquidated damages to Xcel. After such date the post-COD security fund will be equal to **[TRADE SECRET DATA HAS BEEN EXCISED]**. After COD, the security can also be provided in the form of a guaranty if the minimum requirements are met.

4. Curtailment.

Aurora estimates a very low curtailment risk for the Project as the phases will interconnect into Xcel's existing distribution systems. The PPA includes provisions under which

[4] Note that Exhibit J to the PPA should be updated to correct the reference to the units of measurement for the annual committed solar energy amounts (in kWh, not MWh).

Xcel will not be required to pay for curtailments due to emergency conditions, breaches by Seller under its interconnection agreements, maintenance outages of the distribution system, Seller's failure to maintain permits, or Seller's failure to maintain required communication systems with the phases of the Project.

5. Delay/Termination of PPA Based on Need.

Because Aurora's pricing depends, in part, on its phases qualifying for the federal investment tax credit ("ITC"), the parties did not negotiate any delay or termination of the PPA in response to changes in Xcel's capacity need in the 2017-2019 time period. According to Xcel's Compliance Filing, the Aurora Project is the only original bid able to meet its stated in service-date and reach COD prior to 2017.

6. Transmission Interconnection Costs.

Aurora's phases do not require interconnection to the transmission grid. They are connected to Xcel's system at the distribution level. Aurora bears all distribution interconnection costs.

7. Capacity and Capacity Accreditation Risk.

Geronimo offered up to 100 MW (AC) of nameplate capacity in its proposal. To the extent the Project is unable to deliver the full 100 MW, the parties have negotiated a scale of damage payments that escalates the further the aggregate MW level Aurora brings to COD falls short of the full 100 MW. In addition, Aurora's failure deliver the required level of accredited capacity after the first anniversary of the COD results in damages for the period of the accredited capacity shortfall as discussed above.

8. Environmental Risk.

Xcel will own all environmental and renewable energy credits. With respect to environmental risks, Seller is required to complete Phase I environmental assessments of each site and to remediate any contamination it causes at any site during the term of the PPA. Other environmental impacts of the Project will be addressed through the permitting process.

9. Financial Risk.

To further ensure that the interests of ratepayers are protected, the parties negotiated pre-COD and post-COD security fund amounts that protect Xcel generally from the range of financial risks associated with the PPA, with the requirement that initial security be posted no later than 30 days after the initial written order from the Commission approving the PPA. Seller takes all ITC qualification risks.

10. Construction/Operational Risk.

Xcel accepted Aurora's proposal that completed phases can be recognized as having achieved COD in a 120-day window that begins September 1, 2016 and ends December 31,

2016. For each phase that fails to achieve COD by December 31, 2016, Aurora will have the option to complete additional project phases, but will be required to pay liquidated damages until the phase achieves COD. The PPA also includes remedies such as specific performance, step-in rights, actual damages, and termination.

Because there will likely be some phases completed before the start of the COD window on September 1, 2016, Xcel agreed to take pre-COD energy produced by a phase at a price based on the prevailing market rate.

11. Conditions Precedent.

Under Sections 6.1 of the draft PPA, either Xcel or Aurora can terminate the PPA if Xcel has not received state regulatory approvals from the Commission and the North Dakota Public Service Commission ("NDPSC") that, either separately or in the aggregate, allow Xcel to recover 100% of the costs incurred under the PPA. Under Section 6.2, Aurora may terminate the PPA if it is unable to obtain a site permit or interconnection agreements for the Project by December 31, 2015.

12. Other Terms & Conditions.

The PPA contains numerous other terms and conditions typical in a power purchase agreement that involves construction of new resources. These include representations of each party about their ability to enter the transaction, force majeure provisions, dispute resolution, listing of responsibilities, delay damages, and provisions relating to defaults and similar issues. Geronimo is willing to provide any additional analysis that the Commission or Department believes would be helpful to facilitate review of the PPA.

D. Maintain System Reliability.

The Project will provide Xcel and its customers with a high level of reliability. The multiple sites and individual phase connections to existing distribution systems provides geographic diversity and minimizes potential downtime risk. As a solar facility in Minnesota, the Project will have high availability – as supported by the current Saint John's Solar Farm's 99% operation track record during its first three years. In addition, each phase's inverters can be utilized to support power quality through voltage and frequency regulation, which in turn increases the reliability of the grid. The service life of solar equipment is generally acknowledged to be well beyond the 20-year term of the PPA, and the ability and flexibility to perform maintenance without removing the entire Project from service also enhance system performance and reliability.

E. Renewable Energy Obligations and Objectives.

Xcel Obligations

In addition to the energy and capacity the Project will provide Xcel, the Project will also provide Xcel with renewable energy credits under the PPA. These renewable energy credits can be used by Xcel to meet its renewable energy requirements in Minnesota or other jurisdictions.

Alternatively, they can be marketed and sold to further reduce the net cost of energy from the Project. The renewable energy credits available under the PPA will be qualified as solar renewable energy credits (or S-RECs), which can be used to meet Xcel's obligations under the SES.

Xcel noted in its Compliance Filing that it believes that because of the expected step-down in the ITC, "some urgency" is needed with regard to its acquisition of solar resources. The Project will provide Xcel with a solid foundation to achieve not only its anticipated and approved future generation demands, but also its solar energy procurement requirements. Further, the PPA has already been through the negotiation and finalization process, which will provide Xcel flexibility and increased bandwidth to be able to select and pursue supplemental projects and facilities.

Objectives

In addition to the renewable energy standards to which Xcel is subject, Minnesota also required that a preference be shown for renewable energy[5] and greenhouse gas reduction.[6] The Order reflects this preference and the attractiveness of the Project versus nonrenewable energy resources.

F. Cost Effectiveness.

Particularly given that none of the thermal bid proposals appear to be able to meet the price and in-service dates originally bid, the cost of the Project continues to compare favorably to the cost of new natural gas generation resources when all costs and benefits are considered. This issue was addressed extensively through the contested case process and by the Commission's Order.

G. Economic Development Benefits.

The Project will benefit local and regional economies. Additional significant revenue will be generated by the Project for local communities resulting from increased construction activity, payment of taxes, and payments made to local landowners who are participating in the Project. Local economies around the phases will benefit from construction of the Project through procurement of balance of plant components (e.g. cable, steel, racking equipment and other commodities) and from the provision of additional goods and services to the construction workers.

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[5] *See* Minn Stat. § 216B.2422, subd. 4 (providing that the Commission shall not approve or allow rate recovery of a nonrenewable energy facility unless the utility can demonstrate that a renewable energy facility is not in the public interest).

[6] *See* Minn Stat. § 216H.02, subd. 1 (setting goals for greenhouse gas emission reductions).

H. The Terms of the Draft Aurora PPA Comply with the Order.

As described in this section, the terms of the draft Aurora PPA are consistent with the Order and the public interest. Specifically, the Order stated that in evaluating the terms of the PPA the following apply:

> A. Calpine, Geronimo, Invenergy, and Xcel shall be held to the prices and terms used to evaluate each bid for the purpose of cost recovery from Xcel ratepayers. Ratepayers must not be put at risk for costs that are higher than bid or for benefits assumed in bids that do not materialize. If actual costs are lower than bid, the bidders should be allowed to keep those savings.
>
> **Compliance**: Section 8 of the PPA reflects the pricing terms submitted in Geronimo's bid. Further, Section 11 includes security provisions that protect ratepayers if Aurora is unable to perform under the PPA.
>
> B. The agreements must provide terms that sufficiently protect ratepayers from risks associated with the non-deliverability of accredited capacity and/or energy from the project(s) as proposed.
>
> **Compliance**: Section 10 of the PPA contains penalty provisions that protect ratepayers to the extent that Project does not deliver the accredited capacity or energy required under the PPA.
>
> C. The Commission is unlikely to find it reasonable for Xcel to enter into an agreement in which negotiated terms shift risk or unknown costs to ratepayers.
>
> **Compliance**: The PPA does not shift any risk of unknown costs to ratepayers. Specifically, the PPA makes Aurora responsible for all interconnection costs. In addition, the lack of fuel costs protects ratepayers from unknown costs based on the future purchase price of fossil fuels.
>
> D. Delay and cancellation provisions are appropriate considerations for power purchase agreement negotiations.
>
> **Compliance**: The PPA contains delay and cancellation provisions. As discussed in the following section, Geronimo asks that the Commission approve 100% cost recovery for Xcel's costs incurred under the PPA to avoid the potential termination of the PPA by Xcel per Section 6.1 of the PPA for failure of the NDPSC to approve the PPA in a timely manner, if at all, which would undermine the purpose and intent of the Order.

II. REQUEST FOR 100% MINNESOTA COST RECOVERY OF THE AURORA PPA.

Based on the Commission's Order, Aurora has advanced development of the Project to ensure it is able to deliver the Project in a manner consistent with the terms of the original bid

and the draft PPA. Per the terms of the PPA, and also to qualify for the expiring federal Investment Tax Credit ("ITC"), the Project must be placed in service by December 31, 2016. Qualification for the ITC is a material factor supporting the economic viability of the Project. As such, Xcel noted in its Compliance Filing that there is urgency in moving forward on solar acquisitions in a timely manner. Geronimo concurs that "time is of the essence" in confirming that the Project has a fully enforceable PPA.

Geronimo raises this issue to bring to the Commission's attention the importance of approving cost recovery, specifically 100% cost recovery from Minnesota retail customers, for Xcel as part of the Commission's approval of the PPA. While Xcel did not raise the issue in its Compliance Filing, Geronimo requests that the Commission include 100% cost recovery approval to avoid unnecessary delays that could otherwise delay or excuse Xcel from performing under the contract. The Commission's approval of 100% cost recovery does not preclude Xcel from seeking a separate approval from the NDPSC, by which North Dakota ratepayers would share in cost recovery. However, Commission approval of cost recovery – and, thus having a secure PPA in place – would ensure that the development and construction of the Project could move forward and remain on track for 2016 completion.

Under Section 6.1 of the draft PPA, either Xcel or Aurora can terminate the PPA if the Commission and the NDPSC, either separately or in the aggregate, have not approved 100% recovery of costs incurred under the PPA within six months of a written request for such approvals. For convenience, the relevant draft PPA terms include:

> 6.1 Company CPs.
>
> (A) No later than September 23, 2014, Company intends to file an unexecuted draft of this PPA with the Minnesota Public Utilities Commission pursuant to the requirements of the Order. No later than ten (10) Days after receipt of an outcome of the Order approving this PPA as consistent with the Order, Company shall file this PPA with the North Dakota Public Service Commission pursuant to relevant regulatory requirements. Seller shall cooperate with Company's effort to seek State Regulatory Approval.
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> (B) Either Party shall have the right to terminate this PPA, without any further financial or other obligation to the other as a result of such termination, by Notice to the other Party not more than ten (10) Days after the earlier of (i) fourteen (14) Days after receipt of written determinations by both State Regulatory Agencies that together do not constitute State Regulatory Approval, or (ii) six (6) months following the written request for State Regulatory Approval without receipt of State Regulatory Approval. If a Party fails to terminate this PPA in the time allowed by this paragraph, such Party shall be deemed to have waived its right to terminate this PPA under this Section 6.1 and this PPA shall remain in full force and effect thereafter.

> "State Regulatory Agency(s)" means the Minnesota Public Utilities Commission or any successor agencies in the State of Minnesota and the North Dakota Public Service Commission or any successor agencies in the State of North Dakota.
>
> "State Regulatory Approval" means a final, written order of one State Regulatory Agency, or if needed, both State Regulatory Agencies, that does not impose conditions unsatisfactory to the Company and is not subject to application for rehearing, re-argument and reconsideration, and that makes the affirmative determination that Company's execution of this PPA is reasonable and in the public interest, and that 100% of the costs incurred by Company under this PPA are recoverable, in the aggregate, from the retail customers of both States or if only one State then from the retail customers of that State (without application of jurisdictional allocators or other reductions to reflect multi-state operations) pursuant to Applicable Law, subject only to the requirement that the State Regulatory Agency retains ongoing prudency review of Company's performance and administration of this PPA.

Xcel has not yet sought cost recovery approval from the Commission or the NDPSC. Under Section 6.1(a) of the PPA, Xcel would request NDPSC approval after the Commission issues a written order in this matter. Assuming a 3-6 month approval process in North Dakota, this condition precedent may remain open well into the third quarter of 2015, providing a significant financing risk to Aurora that could delay acquisition of equipment and execution of key contracts. Moreover, given NDPSC's conservative approach to cost recovery for projects perceived to be approved by the Commission based on Minnesota' energy policies, it is reasonable to assume that NDPSC's cost recovery approval could lag significantly, if granted at all, essentially serving as a veto of the Commission's approval in this proceeding.[7] Accordingly, Geronimo asks that the Commission make it clear in its approval that Xcel may recover 100% of the costs incurred under the Aurora PPA from its Minnesota retail customers.

While the Project will provide system-wide environmental benefits, including lowering greenhouse gas emissions, providing accredited capacity and avoiding transmission losses, its distributed locations near load centers solely within the State of Minnesota and its the Minnesota SES compliance benefits weigh in favor of a Minnesota-only recovery of PPA costs. These costs

[7] *See, e.g., In the Matter of Northern States Power Company Advance Determination of Prudence – Geronimo Wind Application*, Post-Hearing Brief of Advocacy Staff, North Dakota Public Service Commission Case No. PU-12-59 (Dec. 3, 2012) (recommending that the NDPSC deny Xcel's application for advance determination of prudence for the Prairie Rose Project because the project was driven by Minnesota's renewable energy mandate), *and* Findings of Fact, Conclusions of Law, and Order (Dec. 21, 2012) (denying Xcel's application for advance determination of prudence for the Prairie Rose Project). *See also* Petition to Intervene on behalf of North Dakota Public Service Commission Advocacy Staff, Docket No. 12-1240 (July 31, 2013) *and* Direct Testimony of Mike Diller (Sept. 27, 2013) (expressing concern about Xcel's continued construction of generation facilities in Minnesota, rather than North Dakota).

have already been fully vetted through this contested case proceeding and found to be reasonable and prudent.

As noted above, Geronimo has no objection to Xcel seeking recovery from NDPSC. However, Geronimo does not believe the finality and enforceability of the PPA should not hang in limbo while awaiting such approval. Likewise, the Commission's approval itself should not be jeopardized if NDPSC fails to approve Xcel's request for cost recovery. Aurora must make material capital investments in the near-term in order to keep the Project on-schedule. As demonstrated by the thermal projects in this proceeding, delays in key regulatory approvals can contribute to projects no longer being able to meet the bid price and in-service date commitments. Geronimo hopes to avoid such issues by addressing Xcel's cost recovery up front as part of this approval process.

Accordingly, Geronimo respectfully requests that the Commission approve 100% cost recovery from Xcel's Minnesota retail customers to ensure that, upon Commission approval, the PPA can be executed and relied upon.

III. XCEL'S ATTEMPT TO REARGUE THE ISSUES DECIDED IN THE MAY 23, 2014 ORDER SHOULD BE DENIED.

A. The Commission Already Decided that the Aurora Project Should be Evaluated in Reference to the Other Proposals in the 12-1240 Docket.

In Xcel's Compliance Filing, Xcel suggested that it "believe[s] the Commission's public interest determination for the Aurora solar project in this CAP proceeding could be informed by the PPAs we develop through the Solar RFP process." This assertion is in direct conflict with the Commission's Order. The Commission considered and rejected Xcel's argument during the contested case proceeding that the Aurora Project should be considered in a solar RFP process rather than the 12-1240 docket. For instance, Chair Heydinger noted that the lack of other solar projects in the docket was not an appropriate basis to decline to consider Geronimo's Aurora Project:

> I don't agree that, well, we shouldn't pick it 'cause other solar projects didn't bid in. All solar projects had an opportunity to bid in, so I don't think that's a rationale for not looking at it at all.[8]

In addition, Commissioner Boyd specifically stated that Geronimo should not be relegated to a solar-only RFP:

> I don't believe that the Geronimo process should be relegated to a solar-only project. They answered a call for proposals in a perfectly reasonable and thoughtful way and they deserve to be

[8] Transcript of March 27, 2014, Minnesota Public Utilities Commission Meeting regarding Docket No. 12-1240 ("Transcript"), at 34:18-22.

> evaluated here alongside the other bidders. So I'm perfectly happy and comfortable with this here today. And I'm – I'm – for that reason I'm less inclined to worry about what the RFP might bring in terms of more utility scale solar or distributed and whether there's an opportunity gained or lost. I mean, it's here, it stands on its own legs and it's our job to evaluate it.[9]

As set forth in the comments above, it is clear that the Commission expressly considered the issues raised by Xcel and decided that the Aurora Project should be evaluated based on the record in the 12-1240 docket, and not based on proposals that were not a part of this proceeding. While the Commission was clear that the Aurora Project was to be evaluated on its merits in the 12-1240 proceeding and not relegated to the Solar RFP, Xcel's Compliance Filing essentially tries to bring the Solar RFP to the Aurora Project. The Commission should again reject such efforts.

B. The Commission Already Addressed the Issues Raised by Xcel in its "Updated Resource Need Assessment" and Determined it is in the Public Interest to Ensure that Xcel has Sufficient Capacity to Meet the Needs of its Customers.

In its Compliance Filing, Xcel asserts that it will have surplus capacity resources through 2019, and, as such, the Commission should allow it to delay the addition of resources.[10] Xcel states that "[t]his changed assessment is the result of very modest changes in the Customer Demand forecast, but primarily greater confidence in the MISO resource adequacy paradigm."[11]

Xcel's recommendation in its Compliance Filing is contradictory to the more conservative approach Xcel advanced in the contested case proceedings in Docket No. 12-1240. For instance, Xcel explained that a conservative approach is necessary to ensure adequate generating capacity for its customers:

> [A] conservative approach is warranted to ensure adequate generating capacity on our system under all reasonably plausible outcomes. While this may sometimes mean that available capacity will exceed the identified need for a short period of time, this is preferable to incurring a shortfall of capacity. Further, this conservative planning approach insulates our customers from over-reliance on the MISO market due to routine variations in the availability of system resources.[12]

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[9] Transcript at 50:10-22.

[10] Compliance Filing at p. 2.

[11] Compliance Filing at p. 8.

[12] Xcel Energy Exceptions to ALJ Report at p. 6, Docket No. 12-1240 (Jan. 21, 2014).

Xcel cautioned that "[t]he consequences of a potential capacity deficit in 2017-2019 are significant and should not be underestimated."[13] In addition, Xcel disagreed with the ALJ's focus on the low end of the need spectrum: "The Company is concerned with the implications of this for our customers and believes that a more conservative approach is preferable."[14]

The Commission agreed with the conservative approach advanced by Xcel in the contested case proceedings, recognizing that there is more to ensuring reliability than meeting the MISO reserve requirement:

> [T]he Commission concludes that the strategy recommended in the ALJ's Report gives insufficient attention to uncertainty – specifically, the uncertainty in the data suggesting that Xcel will need no more than 26 MW by 2019. Instead, the Commission will err on the side of ensuring that Xcel has enough capacity to meet the needs of its customers. The future will always be uncertain, but the Commission must proceed to make the necessary choices on the basis of a rigorous analysis of the data that is in the record.[15]

In addition, the Commission recognized that new modeling will always be forthcoming, but that it was important to take action and move forward, or continually be stuck in the same position:

> If we wait for the perfect forecast we will never take any action at all and I don't think that's an acceptable option . . . . But I do worry about us becoming paralyzed by looking for more and more modeling, more and more process, and never accomplishing anything.[16]

Further, the Commission explicitly determined that the MISO reserve requirement formula was not appropriate as the sole guide for purposes of Xcel's long-range plan.[17] Thus, after considering the evidence before it, the Commission adopted a conservative approach and ordered Xcel to proceed with the negotiation of PPAs.

Now, Xcel seeks to revisit the issue of its need. However, despite characterizing its request as an "Updated Resource Need Assessment," Xcel presents no new evidence that justifies its shifting position or presents any basis for the Commission to revisit its decision. Indeed, Xcel admits that it is not putting forth new evidence, stating that its assessment is

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[13] Xcel Energy Exceptions to ALJ Report at p. 12, Docket No. 12-1240 (Jan. 21, 2014).

[14] Xcel Energy Exceptions to ALJ Report at p. 9, Docket No. 12-1240 (Jan. 21, 2014).

[15] Order Directing Xcel to Negotiate Draft Agreements with Selected Parties at p. 26, Docket No. 12-1240 (May 23, 2014).

[16] Transcript at 5:20-6:8 (Commissioner Boyd).

[17] Order Directing Xcel to Negotiate Draft Agreements with Selected Parties at p. 29, Docket No. 12-1240 (May 23, 2014).

primarily the result of Xcel's "greater confidence" in the MISO reserve margin requirement.[18] It is unclear what the basis of this "greater confidence" is. Regardless, it does not provide support for Xcel's further attempt to circumvent the competitive resource acquisition process. As the Commission recognized, and although Xcel has not actually presented any here, new forecast data and modeling will *always* be available. If the Commission were to refrain from making a decision, or revisit prior decisions, simply because new forecast data or modeling might impact the analysis, nothing would ever move forward, and Minnesota would be left without important energy infrastructure. Accordingly, the Commission should reject Xcel's attempt to revisit the issues previously decided in Docket No. 12-1240.

C. Xcel is Precluded from Rearguing the Issues Decided in the May 23, 2014 Order Because it Failed to Seek Rehearing within Twenty Days of the Order.

If a party disagrees with a Commission order, it has twenty days to submit an application for rehearing.[19] An application for rehearing "must set forth specifically the grounds relied upon or errors claimed."[20] The Commission then has 60 days to grant the application, or it is deemed denied.[21]

In its filing, Xcel asks the Commission to consider the Aurora Project in the context of Xcel's Solar RFP process. Xcel raised this very argument in the contested case proceedings, and it was rejected by both the ALJ and the Commission. In the Order, the Commission found that Geronimo's Aurora Project was an appropriate choice for meeting Xcel's energy needs. The Order also incorporated the ALJ's Report, which found that "the greatest value to Minnesota and Xcel's ratepayers is drawn from selecting Geronimo's solar energy proposal."

Neither Xcel nor any other party submitted an application for rehearing – on this or any other issue. Nonetheless, despite not seeking rehearing within the statutory timeframe, Xcel asks the Commission to reconsider issues that were explicitly decided in a previous order. Under the terms of the statute and the administrative rule, Xcel may not do so. Further, reconsideration at this stage – after a full contested case proceeding, ALJ report, and Commission Order based on all of the evidence in the record – puts the transparency of the administrative process at risk and makes the contested case proceedings look like a costly but pointless exercise.

Accordingly, Geronimo respectfully requests that the Commission reject Xcel's attempt to seek untimely reconsideration of the Order.

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[18] Compliance Filing at p. 8.

[19] Minn. Stat. § 216B.27, subd. 1; Minn. R. 7829.3000, subp. 1.

[20] Minn. R. 7829.3000, subp. 2.

[21] Minn. Stat. § 216B.27, subd. 4.

D. In the Alternative, Xcel's Request to Bring the Solar RFP Process to Geronimo Should be Denied Because it Does not Comply with the Track 2 Process Set Forth by the Commission.

Even if the Commission considers Xcel's untimely arguments to reconsider its prior decision, the Commission should reject Xcel's request to combine evaluation of the Aurora PPA with the Solar RFP because doing so is inconsistent with the Track 2 competitive resource process used in this proceeding. Throughout these proceedings, Xcel has tried to avoid serious consideration of the Aurora Project by arguing that the Aurora Project should be considered, not in the 12-1240 docket where it was proposed, but in a separate, solar-only RFP. Both the ALJ and the Commission rejected this argument, and the Commission ordered Xcel to negotiate a PPA with Geronimo for the Aurora Project. Now, however, having been unsuccessful in its earlier arguments, Xcel is apparently trying to bring other parties in – other parties who did not invest the resources and take the risk that Geronimo did expending material capital and personnel resources, who have not acted in reliance on the Commission's Order, and who propose resources that have not been adequately vetted in any regulatory process. Xcel's attempt to circumvent the competitive resource acquisition process established by the Commission, as well as the Commission's Order, should once again be denied.

The Commission established a process whereby bidders would submit proposals in response to a specific, all-source solicitation to provide additional capacity to Xcel. The Aurora Project was offered as a capacity resource in response to that solicitation. Invenergy, Calpine and Great River Energy, too, provided timely bids and addressed the information required to participate in the competitive resource process. Now, after the process has concluded, Xcel seeks to introduce new solar and short-term capacity proposals, none of which were vetted through the contested case process. Further, Xcel's suggestion that the Aurora PPA should be compared to the Solar RFP PPAs attempts to compare completely different resource solicitations. Geronimo's proposal was specifically designed to address the need identified in the 12-1240 docket, namely to maximize capacity and reliably provide capacity to Xcel over its peak demand periods. Conversely, Xcel's Solar RFP requested solar energy to meet the SES. The two proceedings solicited different types of resource proposals and are thus not comparable. Moreover, the fact that the Aurora Project is made up of several separate geographically disbursed sites and is interconnected directly to the distribution system provides much improved reliability over any single-location, transmission-grid-interconnected project. In addition, upgrades that will be paid for via the Aurora Project, as well as having generation closer to actual load, will enhance the distribution system. As the Commission has already determined, the Aurora Project stands on its own merits in this docket. Likewise, projects bid into the Solar RFP stand on their own merits in a separate docket.

Xcel needs to add capacity resources, and the Commission has decided that the most reasonable and prudent alternative to fill this need is the Geronimo proposal.

E. Granting Xcel's Request Would Bring the Fairness and Transparency of these Proceedings into Question.

The bidders that participated in this competitive acquisition process have committed substantial resources and time, which already represents a high hurdle to potential entrants. If

the outcome of the contested case proceeding is simply that Xcel gets to reargue each point it raised during the proceedings and, in the end, gets to choose with whom to negotiate, the process leaves little incentive for bidders to participate in future proceedings. Geronimo respectfully asserts that it is critical to the viability of competitive processes that Xcel be held to the Commission's decision on resource selection, rather than being allowed to reargue the Commission's decision at every turn.

The Commission set the process by which the parties participated in the 12-1240 docket because the Commission determined that the process was appropriate in situations like this, where Xcel provided its own generation resource for consideration. Throughout this docket, Xcel has repeatedly attempted to stray from the process established by the Commission, and it continues to do so with its latest filing. It is fundamentally unfair to all of the bidders, who committed substantial resources to participating in the docket, and even more substantial resources in reliance on the Commission's decision, to modify the process after it has already been completed. It is important to the integrity of the process that the parties be able to fairly participate in the process. It is also important that, once Commission decisions are made and not timely appealed or otherwise challenged, those decisions may not be reargued in direct contradiction to the procedures established by the Commission. It is even more important to the integrity of the process, as well as the investment into energy infrastructure in Minnesota, that bidders be able to rely on the Commission's decisions.

F. Geronimo Would be Substantially Prejudiced if the Commission Allowed Xcel to Circumvent the Commission's Process and Order.

Geronimo would be substantially prejudiced were Xcel allowed to seek untimely reconsideration.[22] Geronimo relied upon the process established by the Commission, and it invested substantial resources into participating in the docket. More importantly, Geronimo relied upon the Commission's deliberations and its Order and has ensured that significant resources were invested into the development of the Aurora Project in order to maintain its proposed in-service date. These substantial investments would not have been made if the Commission had not selected the Project in the 12-1240 docket. For example:

- Environmental reviews of the Project have been completed;
- A site permit application for the Project has been filed;
- Over 50 public meetings have been held;
- Extensive due diligence has been conducted;
- Interconnection studies have been funded; and
- Landowner negotiations have been finalized.

[22] *See*, *e.g.*, Minn. Stat. § 14.69 (providing that an agency decision is reversible upon appeal if the parties' substantial rights are prejudiced because an agency decision was made upon unlawful procedure or affected by other error of law).

If Xcel is allowed to ignore the process and the Order, the Aurora Project could be required to be terminated, resulting in substantial financial harm to all Aurora Project stakeholders and the numerous local communities and landowners who have supported and stand to benefit from the Project.

CONCLUSION

For the reasons set forth above, Geronimo and Aurora respectfully request that the Commission approve the Aurora PPA and find it complies with the Order and is in the public interest. In addition, Geronimo and Aurora request that the Commission allow Xcel to recover 100% of its costs incurred under the PPA from its Minnesota retail customers.

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Respectfully submitted,

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