

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

PUC Docket No. E002/CN-12-1240

PETITION FOR RECONSIDERATION

The Xcel Large Industrials (“XLI”), consisting of Flint Hills Resources, LP; Gerdau Ameristeel US Inc.; Unimin Corporation; and USG Interiors LLC, submit this petition for reconsideration regarding the Commission’s order approving power purchase agreement with Calpine, approving power purchase agreement with Geronimo, and approving price terms with Xcel.

I. INTRODUCTION

On February 5, 2015 the Minnesota Public Utilities Commission (the “Commission”) issued its *Order Approving Power Purchase Agreement with Calpine, Approving Power Purchase Agreement with Geronimo, and Approving Price Terms with Xcel* (the “Acquisition Order”).¹ The Acquisition Order responds to a nearly two year-old finding that Xcel may have a need for an additional capacity of 150 megawatts (“MW”) by 2017, increasing up to 500 MW by 2019 (“Original Need Estimate”).² Despite multiple demonstrations that the capacity need on Xcel’s system may be far less than originally anticipated and culminating in Xcel Energy’s conclusion that it would not likely have a capacity deficit until 2024, the Commission selected resources well in excess of the Original Need Order. The Acquisition Order, which approves 631 MW of new generation capacity, will necessarily have a dramatic and unnecessary impact

¹ *In the Matter of the Petition of Northern States Power Company d/b/a Xcel Energy for Approval of Competitive Resource Acquisition Proposal and Certificate of Need*, Docket No. E-002/CN-12-1240, ORDER APPROVING POWER PURCHASE AGREEMENT WITH CALPINE, APPROVING POWER PURCHASE AGREEMENT WITH GERONIMO, AND APPROVING PRICE TERMS WITH XCEL (February 5, 2015) (“Acquisition Order”).

² *In the Matter of Xcel Energy’s 2011-2025 Integrated Resource Plan*, Docket No. E-002/RP-10-825, ORDER APPROVING PLAN, FINDING NEED, ESTABLISHING FILING REQUIREMENTS, AND CLOSING DOCKET (Mar. 5, 2013) (“Final Resource Plan Order”).

on electric service rates, causing harm to XLI and similarly situated consumers. As such XLI submits this timely petition for reconsideration.³

XLI understands and appreciates that “factors affecting need are continually changing, resource decisions must be made in the midst of flux.”⁴ When all of the “flux” introduced over time points in a single direction, however, XLI struggles to understand how the instability could steer a decision in the opposite direction and worries about the potential impact of such a decision on all ratepayers. In addition to simple ratepayer concerns, XLI fears that the Acquisition Order effectively preempts the resource planning process now underway for Xcel Energy. In light of a record which directs a much more modest outcome and the potentially severe burden the Acquisition Order would cause XLI and other consumers to bear, XLI offers this narrow petition for reconsideration of the Commission’s need assessment.

II. ANALYSIS

A. Legal Standard

Under applicable law, petitions for rehearing or reconsideration are governed by the Commission’s rules.⁵ “A petition for rehearing, amendment, vacation, reconsideration or reargument must set forth specifically the grounds relied upon or errors claimed. A request for amendment must set forth the specific amendments desired and the reasons for amendment.”⁶ The law affords the Commission tremendous flexibility in taking action upon finding a decision unreasonable. “If in the commission’s judgment, after rehearing, it shall appear that the original decision, order, or determination is in any respect unlawful or unreasonable, the commission may reverse, change, modify, or suspend the original action accordingly.”⁷ XLI believes that the Commission’s Acquisition Order which does not take into account the record evidence demonstrating declining capacity need on Xcel Energy’s system and further directs Xcel Energy

³ MINN. R. § 7829.3000, subp. 1 (“A party or a person aggrieved and directly affected by a commission decision or order may file a petition for rehearing, amendment, vacation, reconsideration, or reargument within 20 days of the date the decision or order is served by the executive secretary.”)

⁴ *Acquisition Order*, at pg. 8.

⁵ MINN. STAT. § 216 B.27 subd. 3.

⁶ MINN. R. 7829.3000 subp. 2.

⁷ MINN. STAT. § 216B.27 subd. 3 (emphasis added).

to procure capacity at a level that far surpasses the Commission's prior determination is unreasonable.

B. The Record Culminating in the Acquisition Order Fails to Establish, and Indeed Never Mentions, 631 MW of Capacity Needs on Xcel Energy's System

As the Commission is aware, the pending competitive acquisition process docket ("CAP Docket") was preceded by the Commission's orders in Xcel Energy's 2011-2025 Integrated Resource Plan (the "2011 IRP"). After over two years of analysis, the Commission approved the 2011 IRP for planning purposes only. The Commission specifically stated, "Finally the Commission notes that it is approving Xcel's plan for planning purposes only. This approval does not relieve Xcel from the need to comply with any regulatory review required for any specific resource it might pursue in implementing this plan."⁸ Although not entirely clear, the Commission appeared to be stating that its order approving Xcel's resource plan, more than two years after the docket was opened,⁹ was not to be used as prima facie evidence of need, but instead a starting point for the CAP Docket. Indeed, the Commission found that the record in the resource planning docket demonstrated a large range of potential need, starting at 150 MW by 2017 and increasing to 500 MW by 2019.¹⁰

The CAP Docket is replete with evidence supporting a downward trend in Xcel Energy's need in the 2017-2019 timeframe. This evidence resulted in an Administrative Law Judge's recommendation to limit Xcel Energy's acquisition to the solar bid from Geronimo Energy, and select the GRE capacity bid if the Commission determined that capacity beyond 71 MW is needed before the end of 2019.¹¹ In his memorandum, the ALJ clarified this decision by stating:

⁸ *In the Matter of Xcel Energy's 2011-2025 Integrated Resource Plan*, Docket No. E-002/RP-10-825, ORDER APPROVING PLAN, FINDING NEED, ESTABLISHING FILING REQUIREMENTS, AND CLOSING DOCKET, p6 (Mar. 5, 2013) ("Resource Plan Order").

⁹ *In the Matter of Xcel Energy's 2011-2025 Integrated Resource Plan*, Docket No. E-002/RP-10-825, ORDER APPROVING PLAN, FINDING NEED, ESTABLISHING FILING REQUIREMENTS, AND CLOSING DOCKET (Mar. 5, 2013) ("Final Resource Plan Order").

¹⁰ *Id.* at p2.

¹¹ *In the Matter of the Petition of Northern States Power Company to Initiate a Competitive Resource Acquisition Process*, PUC Docket No. E-002/CN-12-1240, OAH Docket No. 8-2500-30760, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION, pg. 45 (December 31, 2013) ("ALJ Findings of Fact").

In 2011, it was undisputed that: (a) gas powered turbines were a mature technology for generating electricity and (b) the commission determined that Xcel's need for additional capacity by as high as 500 MW in 2019...In 2013, it is undisputed that Xcel: (a) downwardly adjusted its sales and capacity forecasts; (b) is subject to a Solar Energy Standard; and (c) could avoid overbuilding generation facilities by deploying a scalable solution to meet future needs...no one in this proceeding confidently predicted that Xcel would require more than 130 megawatts by 2019, and many suggested the amount is far less, [and] it is certain that Xcel will require significant solar generation resources by 2020. It makes sense to buy the resources that we are certain to need.¹²

Despite the ALJ's comments that no party to the proceeding confidently predicted a need of more than 130 MW by 2019, the Commission continued to wrestle with the appropriate determination of need on Xcel's system.¹³ In the May Order, the Commission cited many of the changes potentially contributing to a declining capacity need and, although it rejected the notion that the need was as low as 26 MW in 2019, the Commission ultimately concurred "with the view that changed circumstances may justify Xcel reducing or delaying its acquisition of new capacity."¹⁴ Evidence that the Commission's view on the appropriate level of need had changed is revealed in the Commission's conclusion. The Commission found that "the record demonstrates sufficient demand to justify selecting the Geronimo proposal. But contrary to the ALJ's finding, this level of need is also more than sufficient to justify selecting a new combustion turbine or combined cycle generator."¹⁵ Notably, the Commission used the word "or," not "and." The Commission ultimately directed the parties to negotiate terms, requiring that the PPA with Geronimo be "consistent with the public interest" and that the three natural gas alternatives be submitted for "Commission review to determine which of these project(s), if any,

¹² *Id.* at pg. 47.

¹³ *In the Matter of the Petition of Northern States Power Company d/b/a Xcel Energy for Approval of Competitive Resource Acquisition Proposal and Certificate of Need*, Docket No. E-002/CN-12-1240, ORDER DIRECTING XCEL TO NEGOTIATE DRAFT AGREEMENTS WITH SELECTED PARTIES, PG. 26 (May 23, 2014) ("May Order").

¹⁴ *Id.* at pg. 30. XLI notes that it did not read the ALJ's findings of fact and conclusions of law as setting any kind of upper limit at 26 MW but rather used the possibility of a much lower capacity need than expected to err on the side of caution with regard to over-building. XLI's understanding is supported by the subsequent comments in this petition.

¹⁵ *Id.* at pg. 31 (emphasis added).

best addresses Xcel's overall system needs identified in this record and [the Commission's resource plan order from March 5, 2013]."¹⁶ The clear implication from this order is that the Commission had still not yet settled on an appropriate determination of need.¹⁷

Despite the downward trend in capacity needs reflected in this docket and Xcel's own determination that it does not have any near-term capacity needs,¹⁸ the Commission ultimately reaffirmed its finding of 150 MW of capacity needs in 2017, "increasing up to 500 MW by 2019."¹⁹ The Commission concluded that "[b]ased on the state of the record regarding Xcel's latest need assessment, the Commission will decline to alter its finding of need on this basis."²⁰ The Commission declined to consider outside evidence, emphasizing that the Commission is tied to analyzing data "that is in the record."²¹ Despite such strong statements, the Commission necessarily had to reach to information outside the record in order to justify procurement capacity so far in excess of the Original Need Estimate.

C. The Commission Should Modify the Acquisition Order to Reflect the Need Set forth in the Record

With all due respect and deference to the Commission, the Acquisition Order appears inconsistent in whether to rely on record evidence. Based on the record, for example, the ALJ determined that it was unclear if there would be any capacity need on Xcel's system within the relevant timeframe.²² During the contested case proceeding and since the May 2014 Order, Xcel continued to suggest the trend on its system is leaning toward no capacity deficits in the 2017-19 timeframe. The Commission, however, has largely dismissed the new record evidence, apparently because the Department of Commerce - Division of Energy Resources (the

¹⁶ *Id.* at pg. 36, ordering para. 1.

¹⁷ For this reason, XLI did not petition for reconsideration at that time, electing to wait to see how the Commission incorporated Xcel's revised capacity need forecasts.

¹⁸ See e.g., Oral Arguments Transcript, Chandarana Opening Statement at 10:6-8 (December 8, 2014) ("As it pertains to need, our September compliance filing continues to confirm that our need for significant capacity additions is not present.")

¹⁹ *Acquisition Order*, at pg. 1 (citation omitted).

²⁰ *Acquisition Order*, at pg. 9.

²¹ *Acquisition Order*, at pg. 9 (*quoting* Ex. 49 at 7) (emphasis in original).

²² *ALJ Recommendations*, Findings of Fact ¶237-239.

“Department”) has not had time to analyze the new data in detail as it had the 2011 data the Original Need Range was based on.²³ Similarly, the Commission has largely ignored the effect of adding substantial wind and solar resources - likely well over 1 gigawatt²⁴ - to Xcel Energy’s system in the relevant timeframe.²⁵ While XLI understands and appreciates that wind and solar resources have different accredited capacity values, these resources undoubtedly add capacity to Xcel Energy’s system over time.

In other circumstances, however, the Commission appears to take other information into consideration that is outside the record. The Commission in its Acquisition Order, for example, seems to base its decision to direct Xcel Energy to over-acquire, at least in part, on the proposed Clean Power Plan. Indeed, the Commission states “the proposed federal Clean Power Plan Proposed Rule (Section 111(d) Rule) could trigger the retirement of an additional 11 - 14 gigawatts by 2020.”²⁶ Further when this issue came up at the hearing on December 15, 2014, Xcel explained that issues related to Section 111(d) would be better addressed in Xcel’s pending Integrated Resource Planning Process (“IRP”)²⁷ and Chair Heydinger relatively quickly

²³ *Acquisition Order*, at pg. 8 (“The Department shares the concerns raised by other parties that Xcel’s new need assessment filing left insufficient time for analysis. Nevertheless, the Department reports that it was able to evaluate some of Xcel’s alleged changes to its need assessment, including Xcel’s proposed short-term capacity additions. On the basis of this partial review the Department now recommends that the Commission defer bringing any new gas-powered generators on-line until 2019 - but no later.”). See also, *Oral Argument Transcript*, Shaw at 33:7-10 (“And what we concluded in the forecast was that - regarding the updated forecast in our comments, was that we - - we didn’t have time to vet that forecast.”)

²⁴ On October 24, 2014, Xcel petitioned the Commission for approval of three projects amounting to 187 MW of solar to meet its solar energy standard, Docket No. E002/M-14-162; On December 29, 2014 Xcel advised the Commission that upwards of 400 MW worth of community solar garden applications were made under its newly approved Section 9 Tariff (Docket No. E002/M-13-867); On October 1, 2013 Xcel filed its Notice of Changed Circumstances in this docket and upon the direction of the Commission in light of its proposal to add 750 MW of new wind resources to its portfolio.

²⁵ XLI understands that accredited capacity values for much of the added wind may be dependent on transmission upgrades and thereby delay accredited capacity for these resources until approximately 2021.

²⁶ *Acquisition Order*, at page 7. Citing MISO Letter to federal Environmental Protection Agency (November 25, 2014) (the “MISO Letter”) available at http://www.ieca-us.com/wp-content/uploads/MISO-asks-EPA-to-remove-Clean-Power-Plans-interim-compliance-targets_11.25.14.pdf We also underscore the fact that the 11 to 14 gigawatt retirement number involves the entire MISO footprint involving 15 states whereas the 1 gigawatt estimate for new renewable generation involves resources to be built in MN or ND and serving primarily NSP-MN.

²⁷ *Oral Arguments Transcript*, Chandarana at 52:10-20. See also, *Oral Arguments - Deliberations Transcript - Day 1*, Chandarana at 9:20-25 and 10:1-3 (“I mention this because there has been some discussion about selecting a thermal resource which may put the company in a position to be more responsive to emerging carbon emissions regulations. The company continues to believe that the record developed here is in regards to what
(continued . . .)

dismissed with addressing them as part of the proceeding: “unless someone believes that we out to take 111(d) seriously into account today, I’d rather not spend our time speculating about the potential impact of 111(d).”²⁸ XLI agrees that concerns related to 111(d) are more properly addressed in the IRP process now underway for Xcel and is extremely concerned by the Commission’s selective attention to 111(d) as justification for moving forward with substantial acquisitions despite the subject being purposefully sidelined in this docket. Particularly when considered with other evidence in this docket, the Commission should not so readily dismiss clear record evidence where it exists - the addition of substantial local generating resources, the revised downward projections of need by Xcel Energy, and the careful assessment of the ALJ - in favor of alternate evidence outside the record that has very little context in this docket.

Furthermore and from a policy perspective, the Commission’s purpose in requiring a utility to demonstrate need for its planned projects is to protect the ratepayer who ultimately pays for such decisions. One of the Commission’s key functions is to prevent the utility from over-building and earning a return on investment at the ratepayer’s expense. Here, the utility exercised prudent caution and requested the decisions on all of the gas projects be deferred in light of a lack of need. As a legal matter, it is not clear how the burden of demonstrating need for new resources is met when the Commission procures resources far exceeding the range of need set forth in its own order and essentially against the utility’s own recommendation. At the very least, it upends expectations about the role the Commission is intended to play in protecting the ratepayer against a utility’s self-interest in over-building. XLI’s concerns are particularly acute in this proceeding because any decisions will be the first time a competitive resource acquisition process has culminated in a decision,²⁹ and therefore could create dangerous precedent.

XLI appreciates Xcel’s caution in light of changed circumstances and hopes the Commission will similarly exercise such prudence and reconsider its Acquisition Order. When asked by the Commission if Xcel would chose to move forward with Black Dog in light of

(. . . continued)

capacity is needed. Questions about the resources needed to respond to emergency - emerging policies are appropriate in our IRP, which is soon to be filed.”)

²⁸ Oral Arguments Transcript, Heydinger at 52:6-10.

²⁹ See *e.g.* Deliberations Transcript, Lange at 39:17-20 (December 15, 2014).

decision to procure more than the utility needed already, Xcel somewhat ambiguously reiterated that the “best information we’re looking at suggests let’s slow down a little bit.”³⁰ Instead and left unchanged, the Commission has ordered the procurement of over 26 times the capacity deficit Xcel now projects in 2024, increased Xcel’s reserve margin by roughly 7 times what Xcel determined was reasonable, and approved 131 MW more than the uppermost need set forth in the Original Need Order. XLI does not believe such an order is supportable based on the record in this docket and is not in the best interests of the ratepayers.

III. CONCLUSION

The 631 MW of capacity the Commission directed Xcel to procure in the near term is not supported by the record in the CAP Docket. Furthermore, it is undisputed that Xcel Energy will be incorporating wind and solar generating resources into its system in the near term and that these resources will have a capacity value. If the Commission elects to err on the side of caution, doing so would lead to decreasing Xcel Energy’s capacity needs, not increasing it. XLI respectfully requests the Commission to reconsider its own Acquisition Order and modify it to come within a zone of reasonableness based on record evidence.

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Respectfully submitted,

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³⁰ Deliberations Transcript, Chandarana at 69:12-22.