

**STATE OF MINNESOTA
BEFORE THE
PUBLIC UTILITIES COMMISSION**

Beverly J. Heydinger
Nancy Lange
Dan Lipschultz
John Tuma
Betsy L. Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

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

MPUC Docket No. E002/CN-12-1240

**GERONIMO ENERGY'S RESPONSE
TO INVENERGY'S REQUEST FOR
RECONSIDERATION**

I. INTRODUCTION

Geronimo Wind Energy, LLC d/b/a Geronimo Energy, LLC ("Geronimo") and Aurora Distributed Solar, LLC ("Aurora") (together, "Aurora") respectfully request that the Commission deny Invenergy Thermal Development LLC's ("Invenergy") request for reconsideration of the *Order Approving Power Purchase Agreement with Calpine, Approving Power Purchase Agreement with Geronimo, and Approving Price Terms with Xcel*, dated February 5, 2015 (the "February 2015 Order").

Invenergy's petition is aimed largely at the Commission's decision to approve the two other natural gas proposals, excluding Invenergy's Cannon Falls proposal from final selection. However, Invenergy's petition also seeks reconsideration of the what it claims are the "three most expensive" proposals, and, in doing so, challenges the Commission's selection of the Aurora proposal. Because the Commission's selection of the Aurora proposal was made in the Commission's separate May 23, 2014 Order (the "May 2014 Order"), Invenergy's request for reconsideration as it relates to selection of the Aurora proposal is untimely and must be rejected.

A. Procedural History.

On April 5, 2013, the Commission received competitive resource proposals from five bidders, including Calpine Corporation ("Calpine"), Geronimo, Great River Energy ("GRE"), 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.

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 Eric L. Lipman ("ALJ") conducted the contested case proceeding. 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.”¹ 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.”² 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.

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 May 2014 Order within the 20-day deadline to do so. Similarly, no party appealed the May 2014 Order.

¹ Findings of Fact, Conclusions of Law, and Recommendation (“ALJ Report”) at 47, Docket No. 12-1240 (Dec. 31, 2013).

² ALJ Report at 48.

On September 23, 2014, Xcel submitted a compliance filing that included an updated resource needs assessment, draft PPAs with Calpine, Invenenergy and Geronimo, and Xcel's Black Dog Unit 6 pricing. Xcel's compliance filing did not seek approval for any of the PPAs.

On October 23, 2014, Geronimo filed comments responding to Xcel's compliance filing. Geronimo requested that the Commission approve the Aurora PPA and find it complies with the Order and is in the public interest.

On December 8 and 15, 2014, the Commission heard oral arguments from the parties and deliberated the merits of the PPAs and pricing terms presented in Xcel's September 2014 compliance filing.

On February 5, 2015, the Commission issued an order approving the Aurora and Calpine PPAs and determining that Xcel's pricing terms for the Black Dog 6 proposal were in the public interest. As it related to the Aurora PPA, the Commission reaffirmed its May 2014 selection of the Aurora proposal and found the terms of the Aurora PPA, as revised during the proceedings, "promote the interest of Minnesota ratepayers by enhancing the likelihood that Xcel will recover the cost of the Geronimo project from ratepayers through Xcel's operations, and from the tax credit." The Commission also found that the Aurora PPA is consistent with Geronimo's initial proposal, does not put ratepayers at undue risk and is consistent with the public interest.

II. ANALYSIS

A. Legal Standard.

If a party disagrees with a Commission order, it must submit a petition for rehearing within 20 days of the order date.³ A petition for reconsideration must specifically set forth the grounds for rehearing.⁴ The Commission "may reverse, change, modify, or suspend" its original decision only if "the original decision, order, or determination is in any respect unlawful or unreasonable."⁵

B. Invenenergy is Precluded from Rearguing the Issues Decided in the May 2014 Order Because it Failed to Seek Rehearing within Twenty Days of that Order.

In part, Invenenergy asks the Commission to reconsider its February 2015 Order based on an assertion that the Commission has selected the three highest cost proposals. Relevant to Aurora, Invenenergy claims that "the Order" (which Invenenergy defined as the February 2015 Order), "states the record also shows that when analyzed as part of a system, Geronimo's

³ Minn. Stat. § 216B.27, subd. 1; Minn. R. 7829.3000, subp. 1.

⁴ *Id.* at subd. 2; *see also* Minn. R. 7829.3000, subp. 2.

⁵ Minn. Stat. § 216B.27, subd. 3.

proposal incurs the highest costs.”⁶ However, as noted in footnote 17 of Invenenergy’s petition, this language was selectively taken from the May 2014 Order, not the more recent February 2015 Order. The full context of the quote from the May 2014 Order is “The record supports the conclusion that, on a stand-alone basis, Geronimo’s proposal has the lowest ratio of cost to anticipated energy generated. But the record also shows that when analyzed as part of a system, Geronimo’s proposal incurs the highest costs.”⁷ The February 2015 Order summarizes its prior selection of the Geronimo proposal and its careful consideration of its costs:

In its May 2014 Order, the Commission directed Xcel to negotiate a draft power purchase agreement with Geronimo, and to submit the agreement for Commission review to ensure that the negotiated terms are consistent with the public interest. A variety of factors prompted the Commission to select Geronimo’s project:

[T]he ALJ’s Report demonstrates the merits of Geronimo’s proposal, both for supporting the reliability and adequacy of Xcel’s power supply, but also for promoting beneficial environmental and socioeconomic outcomes. In particular, the Commission notes the state policy favoring energy from renewable sources, and the goal of reducing greenhouse gases relative to 2005 levels by 30 percent by 2025 and 80 percent by 2050. Geronimo’s proposal best advances these policies.

The principal objection to Geronimo’s proposal has been cost. But whether an analysis shows Geronimo’s proposal to be more expensive than the other proposals, or less expensive, or similar in cost, depends on the value given to solar energy, S-RECs [solar renewable energy credits], externality values, and other factors. While the Department’s analysis found other proposals to be more cost-effective, the difference in the cost of Geronimo’s proposal and other proposals was less than half a percent.

Weighing all factors explored in this record, the Commission affirms the ALJ’s recommendation and will select Geronimo’s proposal.

The Commission affirms these findings. Geronimo’s proposal offers unique benefits. For example, only Geronimo’s proposal would connect to Xcel’s distribution system, thereby alleviating rather than exacerbating transmission line congestion. And only Geronimo states that it can implement its proposal by the beginning of 2017, the first year specified in the docket’s request for proposal.

⁶ Invenenergy Petition for Reconsideration, at 8.

⁷ May 2014 Order, at 32 (internal citations omitted).

The Commission selected the Aurora proposal to meet Xcel's needs in the May 2014 Order. The additional resources selected in the February 2015 Order do nothing to alter the lawfulness or reasonableness of the Commission's selection of the Aurora proposal. Further, Invenenergy has not argued that the Commission's February 2015 Order had any faults relevant to its conclusions that the terms of the Aurora PPA are in the public interest. Accordingly, there is no reason for the Commission to reconsider its February 2015 Order with respect to the Aurora PPA.

III. CONCLUSION

Aurora respectfully requests that the Commission reject Invenenergy's attempt to seek untimely reconsideration of the May 2014 Order selecting the Aurora proposal to meet a portion of Xcel's needs in this docket.

Dated: March 9, 2015

Respectfully submitted,

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