

Minnesota Public Utilities Commission

Staff Briefing Papers

Meeting Date: **April 9, 2015** Agenda Item # 6**

Company: Xcel Energy

Docket No. E-002/CN-12-1240 / E-002/M-14-788 / E-002/M-14-789

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

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

In the Matter of Draft Purchase Power Agreements with Calpine Corporation, Invenergy Thermal Development and Proposed Price Terms for Black Dog Unit 6

Issue(s): Should the Commission take any action on the petitions for rehearing, reconsideration or clarification?

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Background Documents

PUC Order Directing Xcel to Negotiate Draft Agreements w/Selected Parties May 23, 2014
PUC Order Approving Power Purchase Agreement (PPA) with Calpine, PPA with Geronimo and Approving Price Terms with Xcel February 15, 2015
DOC – Request for Clarification or Reconsideration February 25, 2015
Invenergy – Petition for Rehearing and Reconsideration February 25, 2015
Xcel – Petition for Clarification February 25, 2015
Xcel Large Industrials – Reconsideration Petition..... February 25, 2015
Calpine – Reconsideration Answer March 6, 2015
Xcel – Reconsideration Answer March 9, 2015
Geronimo – Reconsideration Answer/Response to Invenergy March 9, 2015
DOC – Other: Answer to Requests for Clarification or Reconsideration March 9, 2015
Calpine – Supplement of Calpine Corporation..... March 11, 2015

The attached materials are work papers of the Commission staff. They are intended for use by the Minnesota Public Utilities Commission (Commission) and are based upon information already in the record unless noted otherwise.

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I. Statement of the Issues

Should the Commission take action on any of the Petitions for rehearing, reconsideration, and clarification?

II. Background

May 2014 - The Commission Selected the Geronimo Proposal and Ordered Xcel to PPA Negotiations

On May 23, 2014, as the result of the Track 1 – Competitive Resource Acquisition Process, the Commission issued its Order Directing Xcel Energy (Xcel) to Negotiate Draft Agreements with Selected Parties (May 2014 Order).¹ In that Order, the Commission found that Xcel continued to need new sources of generation to meet its customers' needs. The Commission found that the record justified ordering Xcel to pursue negotiating finalized terms for four rival proposals:

- 1) Geronimo Energy, LLC (Geronimo)'s 100 MW solar distributed generation project,
- 2) Calpine Corporation (Calpine)'s Mankato Energy Center II 345 MW combined cycle natural gas generator,
- 3) Invenergy Thermal Development, LLC (Invenergy)'s Cannon Falls II 178.5 MW natural gas combustion turbine generator, and
- 4) Xcel's Black Dog Unit 6 - 215 MW natural gas combustion turbine generator.

Specifically, the Commission selected Geronimo's proposal for implementation, provided the parties could negotiate a power purchase agreement that was consistent with the public interest. The Commission also stated that it would review the finalized agreements for Calpine's and Invenergy's proposals, and price terms for Xcel's Black Dog 6 proposal, to determine which, if any, would best address Xcel's overall system needs identified in this record.

September 2014 - Xcel Filed Negotiated PPAs

On September 23, 2014, Xcel filed its Compliance Letter required by the May 2014 Order, containing the following:

1. A draft power purchase agreement (PPA) with Geronimo for up to 100 MW of nameplate capacity from distributed solar facilities, beginning operations by 2016.
2. Draft agreements with Calpine and Invenergy, and a statement reaffirming terms Xcel previously proposed for Black Dog Unit 6, for generators to begin operations by 2018 or 2019.
3. An updated assessment of need for capacity (the September 2014 Update), supporting "a delay of two years or more in adding any new capacity resource to [Xcel's] system."²

¹ See Commission Docket E002/RP-04-1752 *Order Establishing Resource Acquisition Process, Establishing Bidding Process Under Minn. Stat. 216B.2422, Subd. 5, and Requiring Compliance Filing*

² Xcel Energy, September 2014 Need Assessment, p. 4.

February 2015 - The Commission Approved the Geronimo PPA Terms and Selected (and Approved) the Calpine PPA and the Black Dog 6 Price Terms

On February 5, 2015, the Commission issued its *Order Approving Power Purchase Agreement with Calpine, Approving Power Purchase Agreement with Geronimo, and Approving Price Terms with Xcel* (the February 5, 2015 Order). In that Order, the Commission declined to alter its finding of need in response to the September 2014 Update and reaffirmed its finding of need from the May 2014 Order.

Regarding the Geronimo Proposal, the Commission reaffirmed its findings from the May 2014 Order, found that the PPA was consistent with the public interest, and approved it.

The February 5, 2015 Order also outlined the Commission's consideration of each of the thermal proposals. The Commission found that all three thermal proposals had reasonable terms and were consistent with the public interest. Based on Xcel's need, the financial and operational characteristics of the proposals, and the Commission's assessment of risk, among other considerations, the Commission selected Calpine's Mankato PPA and Xcel's Black Dog 6 price terms. The Commission declined to select the Invenenergy Cannon Falls PPA.

February 2015 – Petitions for Reconsideration, Rehearing, and/or Clarifications; Answers

The Department of Commerce (Department), Invenenergy, Xcel, and Xcel Large Industrials (XLI) filed petitions for reconsideration, rehearing and/or clarifications.

The Department, Calpine, Geronimo and Xcel filed answers to the petitions.

III. Minnesota Statutes, Minnesota Rules and Commission Policy on Reconsideration

Under Minn. Stat. § 216B.27 and Minn. Rules 7829.3000, parties may file a petition for rehearing, amendment, vacation, reconsideration, or reargument within 20 days of a Commission decision or order.³ Petitions must set forth specifically the grounds on which the party contends the decision is unlawful or unreasonable.⁴ A request for amendment must set forth the specific amendments desired and the reasons for the amendments.⁵ Answers to the petitions are permitted within 10 days.⁶

If, in the Commission's judgment, its 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 The Commission may decide a petition with or without hearing or oral argument.⁸ Petitions are denied by operation of law unless the

³ Minn. Stat. 216B.27, Subd. 1 and Minn. Rule 7829.3000, Subp. 1.

⁴ Minn. Stat. § 216B.27, Subd. 2.

⁵ Minn. Rule 7829.3000, Subp. 2.

⁶ *Id.* at Subp. 4.

⁷ Minn. Stat. 216B.27, Subd. 3. (Excerpted text.)

⁸ *Id.* at Subp. 6.

Commission takes action within 60 days of the request, which in this case is April 27, 2015.⁹

All five Commissioners supported the motion codified in its February 5, 2015 Order. However, since the issuance of the Order, Commissioner Boyd has left the Commission, and Commissioner Tuma has been appointed. Therefore, any of the four Commissioners present at the December 2014 hearing may offer a motion to reconsider. If one of the four Commissioners moves to reconsider, staff understands Commissioner Tuma may vote on whether to reconsider. If the vote to reconsider passes, Commissioner Tuma may participate in any subsequent deliberations and votes.

Additionally, pursuant to Minn. Stat. § 216B.25, the Commission may on its own motion rescind, alter, or amend any order, upon notice to the utility and after opportunity to be heard.¹⁰

IV. Overview of Petitions and Party Positions

A. Xcel Large Industrials Petition

XLI argues that the amount of capacity the Commission directed Xcel to procure in the near term is not supported by record evidence and is unreasonable. As such, XLI “requests the Commission to reconsider its own Acquisition Order and modify it to come within a zone of reasonableness based on record evidence.”¹¹

Responses to XLI’s Petition

No party directly responded to XLI’s petition or recommendation. It was generally opposed by the Department as insufficient, for failing to set forth a clear recommendation on how to proceed. Xcel opposed the petition, stating XLI did not point to any new issues or new evidence that warranted Commission reconsideration.

B. Invenenergy Petition

Invenenergy requests a rehearing and reconsideration on the following grounds:

1. In approving the Calpine PPA, the Order imposes significant interconnection risks on Xcel and its ratepayers;
2. By approving a PPA inconsistent with a party’s initial bid, the Order contradicts prior Commission direction and undermines the competitive bidding process in Minnesota;
3. The Order approved the three most expensive resources for ratepayers, thus imposing excessive and unnecessary costs on Xcel’s ratepayers; and
4. The Order fails to accurately reflect the record of this proceeding.

⁹ *Id.* at Subd. 4.

¹⁰ Minn. Stat. § 216B.25.

¹¹ Xcel Large Industrials, Petition for Reconsideration, p. 8.

Invenergy requests that the Commission rehear this matter, reconsider its Order, and approve the Invenergy PPA.¹²

Responses to Invenergy's Petition

The Department agreed with portions of Invenergy's petition where it was consistent with their recommendations; however, the Department disagreed with some of the characterizations made in other portions of the petition.

Calpine and Xcel opposed Invenergy's recommendations, arguing the issues were already considered by the Commission, and the petition did not point to any new evidence that warrants the Commission's reconsideration of its February 5, 2015 Order.

Geronimo opposed Invenergy's recommendations as they relate to the selection of the Aurora proposal, arguing Invenergy's objection to the Aurora PPA is untimely.

C. Department of Commerce Petition

The Department requests the Commission clarify or, to the extent it may deem necessary, reconsider its February 5, 2015 Order to clarify:

1. That bidders in future Request for Proposals (RFP) processes will be held to the prices and terms used to evaluate the bids.
2. That Xcel is required to obtain approval of any transmission costs that exceed \$1.5 million and that the Commission may consider requiring Xcel to terminate the PPA should transmission costs prove to be excessive.
3. The Department's position on Calpine's proposal and whether the draft agreement's price terms were consistent with Calpine's initial bid.

Responses to the Department's Petition

Calpine and Xcel opposed Invenergy's recommendations, arguing the issues were already considered by the Commission and did not raise any new issue or point to any new evidence that warrants the Commission's reconsideration of its February 5, 2015 Order.

D. Xcel Energy Petition

Xcel's petition seeks clarification related to cost recovery for Black Dog 6. Xcel argued that the February 5, 2015 Order mischaracterizes the final terms of Xcel's Black Dog 6 proposal.

Responses to Xcel's Petition

¹² Additionally, Invenergy provided a discussion about implications regarding a deficiency notice that the Federal Energy Regulatory Commission (FERC) issues to MISO with respect to the Calpine Generator Interconnection Agreement (GIA). This issue has since been resolved by FERC's letter to MISO dated XYZ and will not be further discussed by staff in this paper.

The Department supported Xcel's clarification on the final price terms of the Black Dog 6 proposal.

No party opposed Xcel's clarification.

V. Did the Petitions meet the requirements in Minn. Stat. § 216B.27 for rehearing and reconsideration?

Minn. Stat. § 216B.27, Subdivision 3 requires that, within 20 days of the Commission order, a request for a rehearing "shall set forth specifically the grounds on which the applicant contends the decision is unlawful or unreasonable."¹³ It should be clear, then, that the grounds for rehearing align with the decisions made in the order.

The ordering paragraphs from the Commission's February 5, 2015 Order are provided in full as Attachment A of this proceeding. In short, the Commission:

- affirmed the findings from its May 24, 2014 Order selecting the Geronimo proposal and approved the PPA;
- selected Calpine's Mankato Energy Center Phase 2 proposal and Xcel's Black Dog 6 proposal to meet Xcel's overall system needs identified in the record; and
- approved the PPA and price terms for Mankato Phase 2 and Black Dog 6, respectively.

A. Xcel Large Industrials

The grounds on which XLI disputes the Commission's decision refer to the amount of capacity Xcel has been directed to procure.¹⁴ Importantly, the Commission did not alter, revise, or make additional findings pertaining to Xcel's *capacity* need in its February 5, 2015 order. Rather, the Commission's order contemplated the reasonableness of the price terms and selected proposals based on a multitude of factors, including previously made determinations of need for capacity.

Since XLI requests the Commission modify its February 5, 2015 Order with regard to Xcel's capacity need, staff believes XLI's grounds upon which it disputes the Commission's decision are not timely and do not meet the requirements set forth in statute and rule.

Additionally, staff is in general agreement with the Department's reply comments, in that XLI did not provide a clear recommendation on how to proceed.¹⁵ While the Department did not comment further on XLI's petition, staff discusses the merits of XLI's Petition in Section VI.

¹³ Minn. Stat. § 216B.27, Subd. 2.

¹⁴ *Staff note:* Both XLI and Invenenergy refer to the nameplate capacity of the suite of resources, which amounts to more than 600 MW. However, to clarify, Xcel's capacity deficit and those resources which fill it would more appropriately be discussed in terms of UCAP values based on the units' summer rating. In total, the Geronimo, Black Dog 6, and Calpine projects expect to provide 557 MW of accredited capacity in MISO.

¹⁵ XLI requested "...the Commission to reconsider its own Acquisition Order and modify it to come within a zone of reasonableness based on record evidence." Xcel Large Industrials, Petition for Reconsideration, p. 8.

B. Invenergy

Invenergy asserts that the Commission's Order fails to appropriately consider record evidence in three general areas: Xcel's need for capacity, the relative cost of Invenergy's proposal, and the shift of unknown costs and risks onto ratepayers in approving the Calpine PPA. Below, Staff discusses each of Invenergy's grounds for reconsideration in the context of whether they are timely. Section VI of the briefing paper will address the merits of Invenergy's petition.

1. The Commission's Consideration of Record Evidence of Xcel's System Capacity Need

Invenergy argues its Cannon Falls proposal is "is the resource most appropriately sized for Xcel's need."¹⁶ Furthermore, Invenergy objects, "presumably the Order continues to refer to the needs as determined in Xcel's 2010 Resource Plan docket and not the more recent forecasted needs showing a lower overall need."¹⁷

As with XLI's dispute, the Commission's February 5, 2015 Order did not modify previously made findings of need for capacity as a result of Xcel's September 2014 Update. No new expansion plan modeling was introduced as evidence in the September 2014 Update or has been since the May 2014 Order. The Commission, on page 9 of its February 5, 2015 Order, stated:

Based 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. Rather, the Commission reaffirms its finding from its May 2014 Order at 26:

[T]he 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.

Invenergy did not request a rehearing or reconsideration of the Commission's determination of need within 20 days of the May 2014 order. Thus, Staff believes Invenergy's grounds for dispute, as they pertain to need, do not meet the 20 day requirement under Minn. Stat. § 216B.27, Subd. 1. If the Commission disagrees, it can consider the merits of Invenergy's request, discussed in Section VI of this briefing paper.

2. Dispute with the Commission's Project Selection

Invenergy contends "the record demonstrates that the Invenergy Cannon Falls project is the least cost resource for ratepayers,"¹⁸ although the Commission Order "approves the three most expensive resources." Invenergy requests the Commission reconsider and select the Invenergy proposal.

¹⁶ Invenergy, Request for Rehearing and Reconsideration, p. 2.

¹⁷ *Id.* at 9.

¹⁸ Invenergy, Request for Rehearing and Reconsideration, p. 8.

Staff believes Invenergy's grounds for proposal selection is timely for reconsideration, *if limited to the thermal proposals*. Staff agrees with Geronimo that the date has passed to request rehearing on the selection of the Geronimo project. The Commission's May 2014 Order, not its February 5, 2015 Order, selected the Geronimo proposal.

3. Dispute with the Calpine PPA

Invenergy also disputes that the Commission's Order imposes significant interconnection risks onto Xcel ratepayers. Furthermore, Invenergy requests that since the dispatchability payment was not presented in Calpine's initial bid terms, the Commission should rehear this matter and reconsider.

Because the Commission's February 5, 2015 Order contemplates the reasonableness of the PPA terms, staff believes Invenergy meets the requirements in statute and rule to request the Commission reconsider the terms of the Calpine PPA.

Invenergy sets forth several grounds on which it disputes the Commission's decision in the February 5, 2015 Order. Staff does not believe all of Invenergy's grounds for rehearing are timely. If the Commission grants Invenergy's petition, staff recommends limiting the issues to reconsidering the thermal proposals only and the reasonableness of the Calpine PPA terms.

C. Department Petition

Because the Commission's February 5, 2015 Order contemplates the reasonableness of the Calpine PPA terms, staff believes the Department's request meets the requirements in statute and rule to request clarification or reconsideration of those terms.

D. Xcel Energy Petition

Because the Commission's February 5, 2015 Order discusses Xcel's cost recovery approach for Black Dog 6, staff believes Xcel's request for clarification of this approach meets the requirements in statute and rule.

VI. *Should the Commission take action on any of the Petitions for rehearing, reconsideration, and clarification?*

If the Commission determines that a party's petition for rehearing, reconsideration, or clarification has not met the applicable legal standard, the Commission can deny the petition outright, or it can decline to take action, and the party's request would be considered denied.

If the Commission takes up a party's request for reconsideration, the Commission can:

1. reconsider, and (a) affirm, (b) modify or (c) reverse its initial decision;
2. toll the time period to allow additional time for reconsideration; or
3. deny the petition for reconsideration and thereby affirm the initial decision.

It is not mandatory that the Commission consider the petitions in any particular sequence. Nevertheless, since XLI and Invenergy raise claims that the Commission did not appropriately consider record evidence, staff discusses XLI's and Invenergy's petitions first, in order to give the Commission's decision a broader context.

The term "need" is frequently referenced in XLI's and Invenergy's petitions. Need, in a general sense, refers to the size, type, and timing of generating resources which maintain reliability and minimize costs and environmental impacts for Xcel's total system. This includes considering not only which expansion plans are least-cost, but making risk management assessments with regard to Xcel's ability to deliver cost-effective energy over the long-term, not just 2017-2019.

Invenergy claims the Commission's May 2014 Order inappropriately relies on the Commission's March 2013 resource plan order. XLI suggests the May 2014 Order left the needs question unsettled, which was why it did not petition for reconsideration at that time.

The term "need" should be made in the appropriate context, which is to consider the range of Xcel's capacity deficits over the entire planning horizon (size and timing) and the combinations of proposals which minimize the price of electricity (type). Along these lines, the Commission also considers proposals (or combinations of proposals) which mitigate environmental impacts and provide ratepayers insulation from excessive risk.

The Commission's March 2013 resource plan order made a general finding of the size and timing of Xcel's capacity deficit for three particular years. The narrowness of this finding was simply to serve as a guidepost to the resource acquisition proceeding and to notify bidders of a range of megawatts sought. The Commission purposefully chose not to include "type" in the IRP order, because not doing so would allow the acquisition process to attract more generators and more combinations of resource portfolios, which could potentially minimize total system costs. The Commission's ultimate decision, however, reflects several least-cost alternatives, under a variety of circumstances, to create long-term value and maximize flexibility through delayed in-service and cancellation provisions in the PPAs.

A. Xcel Large Industrials Petition for Reconsideration and Rehearing

XLI requests the Commission modify its order to "take into account the record evidence demonstrating declining capacity need."¹⁹ XLI does not support the Commission's decision to approve multiple thermal proposals, especially in light of Xcel's recent wind and solar acquisitions and Xcel's declining determination of need. XLI claims 1) the amount of capacity the Commission directed Xcel to procure is unreasonably higher than the Commission's finding from its May 2014 Order, 2) there was insufficient consideration of the declining need demonstrated in the record and 3) there was insufficient consideration of Xcel's revised September 2014 Update.

In its Answer, Xcel disagreed with XLI's characterization of declining capacity need, stating:

¹⁹ Xcel Large Industrials, Petition for Reconsideration, p. 2.

XLI's argument ignores the overall uncertainty attendant in all resource need forecasting, which in this case did not uniformly trend downward as XLI claims. Rather the need shifted back and forth over time depending on changes in our demand forecast and MISO reserve requirements calculations, among other things.

Consideration of Wind and Solar Developments

XLI states in its Conclusion that the Commission's decision should take into account Xcel's recent and future wind and solar acquisitions.²⁰

Regarding Xcel's 750 MW wind procurement plan, the Commission has already addressed this concern in October 2013 when it required Xcel to file a notice of changed circumstances in the competitive resource acquisition docket.²¹ As a result, the modeling, analysis, recommendations, and Commission decision incorporates the impact of Xcel's wind procurement.

Likewise, the Commission has already decided that proposals not bid by April 2013 would not be considered in the resource acquisition docket.²² Moreover, the Commission specifically declined to consider the pending solar bids within the resource acquisition docket in its February 5, 2015 Order.²³ Nevertheless, as with Xcel's wind procurement plan, both Xcel and the Department assumed SES (Solar Energy Standard) compliance within their respective Strategist models.

Disputes over the Size and Timing of Xcel's Need

Regarding the size and timing of Xcel's needs, the Commission agreed with the view that "changed circumstances may justify Xcel reducing or delaying its acquisition of new capacity," but disagreed that those circumstances justify reducing Xcel's acquisitions to no more than 26 MW by 2019, as found by the Administrative Law Judge (ALJ) Report.²⁴ Consequently, the Commission provided Xcel with the option to postpone the in-service dates to as late as 2019,²⁵ while affirming that the record in its entirety demonstrated a capacity need for more than 300 MW by 2019.²⁶

With regard to the "type" element of size, type, and timing (i.e. total system costs), the modeling performed by Xcel and the Department demonstrated that selecting multiple projects was less expensive than selecting one or no project(s), due to the attractiveness of the pricing relative to generic units otherwise selected in the expansion plan. These economic findings were robust

²⁰ XLI Petition for Reconsideration p. 8.

²¹ Commission order requiring notice of changed circumstances, October 4, 2013.

²² Commission order, *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*, March 5, 2013.

²³ Commission order requiring notice of changed circumstances, October 4, 2013.

²⁴ Commission order, *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*, February 5, 2015, pp. 17-18.

²⁵ Commission order, May 24, 2014, p. 30.

²⁶ *Id.* p. 9.

²⁷ *Id.* p. 31.

even in light of Xcel's recent wind and solar additions within a new MISO resource adequacy construct. For example, the Black Dog 6 + Calpine package was the least-cost expansion plan under the Department's "Scenario 6," which assumed its base forecast, SES compliance with a 72 percent solar accreditation, 800 MW of wind, and MISO coincident peak reliability calculations.²⁷ Xcel's scenario analysis produced similar results. Xcel's September 2014 Update, on the other hand, contained no new economic modeling; it was a load and capability projection which introduced no quantitative evidence regarding total system costs.

Concerns Regarding Overbuilding

Another basis on which XLI disputes the Commission's decision is discussed on page 7 of XLI's petition:

One of the Commission's key functions is to prevent the utility from overbuilding 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.²⁸

The possibility of excess capacity is, again, not a new issue. While XLI asserts that "caution" means making minimal (or no) pre-2020 investments, the Commission concluded that the risk of possibly being overbuilt was preferable to the possibility of being underbuilt.²⁹ In fact, Xcel expressed the same preference prior to the negotiation phase. In the Company's Exceptions to the ALJ Report XLI references in its Petition, Xcel disagreed with the ALJ because the Company believed the range and uncertainty of need should be taken into account and that "a conservative approach is warranted to ensure adequate generating capacity."^{30,31,32}

Xcel reinforces its view in its Answer to XLI's petition for reconsideration, stating:

We generally take a conservative approach to evaluating resource needs to ensure we have adequate resources to satisfy our obligation to serve under all reasonable circumstances. Forecast demand fluctuates over time, sometimes significantly, based on small changes in economic indicators. Because resource decisions are made in the midst of fluctuating circumstances, it is important to balance the cost of new generation against the risk of falling short or exposing our customers to market risk.

Staff Conclusion on XLI's Petition

The February 5, 2015 Order clearly addressed the considerations to not act on Xcel's September 2014 Update and instead found reason to *reaffirm* the need for capacity identified in its May

²⁷ Rakow Direct Attachments, September 27, 2013.

²⁸ XLI Petition for Reconsideration, p. 7

²⁹ Commission order, Feb. 5, 2015, pp. 8-9.

³⁰ Xcel Energy, Exceptions to ALJ Report, at 5-6

³¹ Staff briefing papers, p. 16., filed December 1, 2014

³² Commission order, *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*, February 5, 2015, page 8.

2014 Order. Thus, Staff does not believe that XLI raises a new issue, or that there is new record evidence not contemplated in the Commission's February 5, 2015 Order.

B. Invenergy Petition for Reconsideration and Rehearing

Invenergy claims its Cannon Falls proposal should have been selected since the record shows that Xcel's need is diminishing and, under some scenarios, the Cannon Falls proposal was part of the least-cost expansion plan. Furthermore, Invenergy asserts its PPA subjects Xcel ratepayers to the least amount of risk among the proposals bid.

Lower Need Projections

Similar to XLI, Invenergy refers to Xcel's purportedly diminishing capacity deficit in 2017-2019, which likewise stem from Xcel's September 2014 Update. Again, the Commission already determined that Xcel's recent load and capability projection, filed after the PPA negotiation phase, should not neglect the total system cost analyses run by Xcel and the Department. Furthermore, since Xcel's September 2014 Update contained several unverified adjustments to its capacity position,³³ the Commission was not persuaded that the record could support a conclusion that Xcel's capacity need had been significantly and definitively diminished. The Commission's February 5, 2015 Order states:

Because factors affecting need are continually changing, resource decisions must be made in the midst of flux. The weight the Commission gives to an assessment reflects the scrutiny the assessment has received. Xcel's latest need assessment is based on a technically complex analysis that has received much less scrutiny than Xcel's prior assessments.

Need assessments are necessarily approximate and even the most analytic utilities must plan for a range of outcomes. In this docket the Department has evaluated the consequences of selecting various combinations of generators under multiple scenarios – including a scenario of lower-than-expected demand. In short, Xcel's latest demand forecast, though new, was still within the range of contingencies contemplated and evaluated by the Department.³⁴

Invenergy's grounds for reconsideration appear to be based in perceived downward trends to Xcel's peak demand. However, as Xcel correctly observes in its Answer, the Company's capacity position and its fluctuation depended upon several factors, including load and capability adjustments and changes to MISO's resource adequacy construct. Thus, the Commission did not rely on any one Assessment in particular. With regard to Xcel's September 2014 Update, the Commission specifically chose not to modify its May 2014 finding of need to incorporate Xcel's

³³ Staff note: Xcel made four major modeling adjustments in its September 2014 Update, which collectively reduced its net capacity need by more than 500 MW: (1) its MISO coincident peak/reserve margin adjustment, which reduced Xcel's need by 270 MW; (2) a 75 MW diversity exchange with Manitoba Hydro; (3) a 153 MW life extension at Blue Lake 1-4; and (4) improved capacity values from Black Dog 5/2 and Sherco 3.

³⁴ Commission order, February 5, 2015, p. 8.

updated load and capability, in part because the demand forecast did not materially change³⁵ and in part because the September 2014 Update did not introduce any new economic analysis, or an updated expansion plan which could be measured on the basis of total system costs. While Invenenergy claims that the Commission's most prudent course of action should have been to focus exclusively on the lowest bound scenario previously modeled, this isn't a new issue, only a different point of view.

Proposal Selection

Invenenergy asserts that the February 5, 2015 Order unreasonably approved the three most expensive resources. According to Invenenergy, the Commission should have selected Invenenergy's Cannon Falls proposal because 1) it is a least-cost result under the lower forecast contingencies and 2) it has the lowest direct rate impact among the proposals bid.

First, since the Commission's proposal selection was based on total system cost over an entire planning period, it is not an apples-to-apples comparison to match the total dollars of a smaller-sized combustion turbine to those of a larger-sized combined cycle unit. Invenenergy is correct that its proposal has the lowest rate impact of the thermal proposals, but this is in part because it is the smallest thermal project. Xcel has previously addressed this in its rate impact assessment, provided in Direct Testimony and cited in Section III of Invenenergy's petition. Xcel stated:

In the context of the Company's system, these projects are rather small and their rate impacts are expected to be minimal. In the first full year of the Black Dog 6 project - 2020 - the forecasted rate impact is 0.05 cents/kWh. In the first full year of the Calpine PPA - 2018 - the rate impact associated with the capacity payments is forecasted to be 0.07 cents/kWh. This cost increase will be partially offset by the fuel efficiency gains from the project, which are projected to be about 0.01 cents/kWh. Invenenergy Cannon Falls would have the smallest rate impact of only 0.02 cents/kWh. But Cannon Falls is also the smallest resource considered for selection. The total impact of Black Dog 6 and either of the two PPAs should be less than 1% of average rates.

Xcel's conclusion is made within a context in which projects could create the most long-term value while minimizing total system costs. Invenenergy's statement only applies to certain conditions within the model. The "lower overall need" Invenenergy references in its petition reflects Invenenergy's own perspective about the future, but it contains no discussion of the range and uncertainty of need and the management of risk—specifically energy price risk—which can only be captured by a comprehensive scenario analysis.

Xcel's analysis showed Calpine's Mankato project to be competitively priced under base case conditions. When tested at higher natural gas price and high carbon price sensitivities, the value of Calpine's Mankato project was "magnified considerably."³⁶ The Department's modeling, reproduced in its October 24, 2014 comments, reiterated that multiple thermal proposals

³⁵ Staff note: According to Xcel's September 2014 Update, the fall 2014 peak demand forecast was 22-68 MW lower than the fall 2013 forecast over 2017-2019, approximately a 0.002 percent reduction in peak demand.

³⁶ Xcel Energy, Wishart Direct, at 38.

represented the least-cost expansion plan under “base,” “mid-low,” and “low” forecast conditions.³⁷ Specifically, the Department found that a package consisting of Xcel’s Black Dog 6 and Calpine’s Mankato Phase 2 was the least-cost plan under both the base and mid-low conditions, while the least-cost plan under the lowest forecast conditions was Black Dog 6 and Invenenergy’s Cannon Falls project.³⁸ Even though Invenenergy’s project was competitively priced under some scenarios, the Commission preferred Black Dog 6 and Calpine’s Mankato project for reasons including cost, but not limited to cost, as outlined in the Order.

Unknown Costs and Unknown Risks of the Calpine PPA

Invenenergy objected to the Commission’s selection and approval of the Calpine PPA on the grounds that the PPA terms expose Xcel’s ratepayers to unreasonable and unknown costs and risks. Invenenergy took exception to Calpine’s inclusion of a dispatchability payment, which was not in its initial bid, and claims the potential interconnection costs of Mankato Phase 2 expose Xcel’s ratepayers to significant risk.

Invenenergy objected to the dispatchability payment for two reasons. First, Invenenergy argues the Commission cannot rely on the Strategist modeling if it did not include the complete cost of the bid. Second, Invenenergy contends that the Commission, by approving a PPA with a new price term, did not follow its own rules to hold bidders to their initial prices and terms.

The Commission’s February 5, 2015 Order explains that it may be reasonable to entertain price terms which are new, if there are benefits available to ratepayers by doing so. Furthermore, viewing a single term in isolation does not necessarily capture the full extent of the reasonableness of a PPA. In this case, modifying the Mankato Phase 2 PPA to mirror the price terms of the existing Mankato facility, which has a dispatchability payment, could create benefits for Xcel and Calpine, and doing so could optimize the operational flexibility of the expansion.

The amount of the dispatchability payment was included in the record, as was the estimated cost of the payment over the PPA term.³⁹ However, since the benefits of the dispatchability payment were less clear, ordering paragraph 2.B. of the Commission’s February 5, 2015 Order requires Xcel to address the net benefits of the dispatchability payment “in any request to recover costs related to this project.”⁴⁰

Invenenergy also argued that the interconnection costs to be borne by Xcel ratepayers are unknown and potentially significant. Invenenergy refers to a docket before FERC, regarding the ability of Mankato Phase 2 to interconnect to the Northern States Power-Minnesota (NSP-M) transmission system. In October 2014, MISO proposed changes to the Original Generator Interconnection Agreement (GIA) at Mankato to reflect Mankato Energy Center’s build out of Phase 2, which requires installation of network upgrades.

³⁷ Department Comments, October 24, 2014, p. 13.

³⁸ *Id.*

³⁹ The dispatchability payment cost estimate is included in the response to DOC Information Request #72.

⁴⁰ Commission order, paragraph 2.B., February 5, 2015, p. 23.

For this docket, Invenergy asserts that “the overall risk associated with Calpine’s interconnection may have increased dramatically since the submission of the PPA,” referring to the outcome of the FERC docket. However, on March 10, 2015, FERC approved the MISO/Mankato GIA amendment as MISO proposed it. Consequently, Staff does not believe there are any further issues to resolve which are relevant to the interconnection risk.

Another ground for reconsideration is the possibility that interconnection costs may be higher than assumed. In evaluating the Calpine proposal in Strategist, the Department included \$1.5 million in potential transmission interconnection costs. Invenergy claims that the possibility of interconnection costs being higher places an unknown cost on Xcel’s ratepayers.

All cost estimates are unknown to some extent. Modeling necessarily incorporates some unknown expectation for what prices and costs in the future might be. This includes assumptions for natural gas prices, coal prices, capital costs, and several others, including transmission interconnection costs. Invenergy’s project, too, has specific unknown costs transferred to ratepayers, as a result of switching its 179 MW combustion turbine to a 209 MW turbine since its proposal was evaluated.⁴¹ While the Department’s \$1.5 million interconnection cost estimate of Mankato 2 may be uncertain, it was never questioned as being unreasonable during the proceeding. Therefore, Staff believes the Commission’s consideration of interconnection costs was reasonable, in part because no party disputed the cost estimate or submitted a more reasonable one.

Arguably the best source for an interconnection cost estimate at Mankato Phase 2 is MISO’s publicly available, October 2014 Amended GIA, discussed above. Appendix A of the GIA estimates the network upgrades of Mankato 2 to be \$1.8 million, which is not significantly out of line with the estimate used for the expansion plan modeling. Simply because there was no sensitivity analysis around the single cost estimate the Department provided does not mean any number higher than the estimate should be qualified as excessive.

Staff’s Conclusion on Invenergy’s Petition

Invenergy provides three general categories of grounds for dispute: Xcel’s purportedly diminishing need, its Cannon Falls proposal’s rank among the competing thermal bids, and the unknown costs and risks of Calpine’s Mankato PPA. All three categories were addressed in the Commission’s February 5, 2015 Order. The only new issue Invenergy raises has been settled at FERC. Thus, Staff recommends the Commission deny Invenergy’s petition for rehearing and reconsideration.

C. Department of Commerce Petition for Reconsideration or Clarification

The Department requests the Commission clarify or, to the extent it may deem necessary, reconsider its February 5, 2015 Order to clarify four points.

⁴¹ Department comments, October 24, 2014, p. 18.

1) That bidders in future RFP processes will be held to the prices and terms used to evaluate the bids.

The Department continues to express concern about the Calpine dispatchability payment (being higher than Calpine's original bid) and potential transmission interconnection charges that may be in excess of \$1.5 million (which may exceed the cost the Department used to *evaluate* the bid in its modeling).⁴² In the Department's view, allowing PPA terms to include costs not submitted in initial bids undermines the transparency and purpose of the bidding process.

The Commission addressed both these points in its February 5, 2015 Order at page 20:

Moreover, the Commission finds the terms of Calpine's power purchase agreement to be reasonable, even with respect to transmission costs and dispatchability payments. This is so, notwithstanding the Commission's admonitions that "[r]atepayers must not be put at risk for costs that are higher than bid" and that "[t]he 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."³²

With respect to Calpine's transmission interconnection language, the negotiated agreement does not alter the terms initially established in Calpine's proposal – that is, the terms under which the Department determined Calpine's proposal to be the most cost-effective. Moreover, Calpine and Xcel are sophisticated, competing parties negotiating an arm's length transaction. There is nothing inherently unreasonable with Xcel bearing a portion of a generator's interconnection costs as part of a power purchase agreement, especially when the agreement has a cancellation clause.

Consequently the Commission finds insufficient reason to second-guess their transmission interconnection terms at this time.

Calpine's proposed dispatchability payments, in isolation, would shift costs to ratepayers. However, the magnitude of these costs is not unknown; it is reasonably clear and quantified. Moreover, when these payments are evaluated not in isolation, but within the context of the larger agreement, they are eminently reasonable. According to Calpine and Xcel, these payments are 1) common in the industry, 2) small in proportion to other considerations, 3) motivated by a desire to coordinate the operations of both halves of the Mankato Energy Center, creating economies of scale and the potential to generate offsetting revenues, and 4) offset by other concessions. Thus the Commission finds that the *net* costs of these terms, evaluated in context, are reasonable and consistent with Calpine's overall proposal.

Staff believes this consideration was clearly contemplated by the Commission during its deliberations, was properly reflected in the order, and was not unlawful or unreasonable.

⁴² The Department's original recommendation that was adopted by the Commission, was to hold the bidders to the price and terms that were *bid* into the process. The Department is now recommending that the Commission use the price and terms used to *evaluate* the bid in the record. Calpine's bid terms did not include the full cost of transmission interconnection charges since the PPA assigned the cost responsibility to Xcel. Through the proceeding, a \$1.5 million estimate was added to Calpine's bid for comparison purposes. No variations of that price (\$1 million, \$2 million, etc) were used in modeling to assess the risk tolerance of that estimate.

Staff also believes it is reasonable, but not necessary, to clarify that the Commission will continue to, uphold the integrity of the competitive bidding process in any future proceedings.

2) That Xcel is required to obtain approval of any transmission costs that exceed \$1.5 million and that the Commission may consider requiring Xcel to terminate the PPA should transmission costs prove to be excessive.

As the Order above states, Staff believes the Commission clearly contemplated the risk and potential of Calpine's transmission interconnection costs exceeding \$1.5 million. Staff does not believe the Commission decision was unlawful or unreasonable.

That being said, per the Department's request - staff believes it is reasonable, but not necessary, to require that Xcel return to the Commission to obtain approval (as the Department suggests) if transmission costs are found to be in excess of \$1.5 million.

3) The Department's position on Calpine's proposal and whether the draft agreement's price terms were consistent with Calpine's initial bid.

The Department requested that if the Commission reconsiders its order, that it clarify the position regarding the consistency of the Calpine PPA with Calpine's original proposal. Specifically, the Department noted that the Commission's Order stated at page 12, under '2. Price, Financial Risk, Operational Risk':

The Department reviewed the draft agreement's terms governing price and promised nameplate capacity, and concluded that they were consistent with the Calpine proposal.

The Department requested the Commission modify the order to ensure it reflected the Department's full analysis which concluded that certain terms of the PPA were not consistent with the cost assumptions used to evaluate the bid.

Staff understands the Department's request, in that it would like its full position captured in the order – however, as written, staff does not believe an unlawful or unreasonable statement has been made in the order. The record, as cited by the Department – captures their position sufficiently.

4) Xcel's Final Price Terms regarding Black Dog 6

The Department supported the order revision proposed by Xcel clarifying its cost recovery expectation regarding the Black Dog 6 project (as summarized in the Xcel section below).

Staff Conclusion on Department Petition:

Staff believes that all issues raised by the Department were known, considered, and factored into the Commission's February 5, 2015 Order.

Further, staff agrees with Xcel that “(t)he Commission’s findings and conclusions with respect to the costs of the resources selected, and the transmission cost and dispatchability payment terms of the Calpine PPA, are fully discussed in the February 5, 2015 Order and well supported by the record.”

D. Xcel Energy Petition for Clarification

The February 5, 2015 Order outlines the cost recovery for Xcel’s Black Dog 6 proposal as follows:

Xcel states that it will forgo recovery of any costs that exceed its proposal (plus financing costs). But ... Xcel states that it would not seek to recover from ratepayers more than the project’s actual costs, plus financing costs, even if this proves to be less than the amount of Xcel’s bid ... The Department concludes that these proposed terms are reasonable.⁴³

The Commission’s Order further “select[ed] the proposal as a resource that fits Xcel’s need and approves the price terms.”⁴⁴

While Xcel initially offered such terms, Xcel notes that it revised these terms in its September 23, 2014 Compliance Filing to conform to the Commission’s May 23, 2014 Order which stated, “If a bidder’s actual costs prove to be lower than bid, however, the bidders should retain those savings.”⁴⁵ Consequently Xcel’s final bid proposed to recover the *full amount of its bid cost*, regardless of how much Xcel might ultimately spend to implement its Black Dog 6 proposal.⁴⁶ Regarding the cost to finance Black Dog 6, Xcel proposes to recover only the amount required to cover its actual construction cost, capped at the amount required to finance its bid costs.⁴⁷

No party opposes Xcel’s petition for clarification.

Staff Conclusion on Xcel’s Petition

Xcel correctly observes that the February 5, 2015 Order inadvertently mischaracterizes the final terms of Xcel’s Black Dog 6 proposal. Nevertheless, the rest of the Commission’s assessment of the proposal – including the fact that the Department found the terms proposed by Xcel to be reasonable⁴⁸ – provides ample support for the Commission’s selection of Xcel’s proposal.

⁴³ February 5, 2015 order at 17.

⁴⁴ *Id.* at 23, Ordering Paragraph 3.

⁴⁵ Order Directing Xcel to Negotiate Draft Agreements with Selected Parties (May 23, 2014) at 35.

⁴⁶ Xcel compliance filing (September 23, 2014) at 18.

⁴⁷ *Id.*

⁴⁸ Department comments (October 23, 2014) at 24.

Decision Options

1. Grant reconsideration of the Commission's February 5, 2015 Order in accordance with the Petition by:
 - a. XLI
 - b. Invenergy
 - c. Department of Commerce
 - d. Xcel
2. Deny reconsideration Petitions filed by:
 - a. XLI
 - b. Invenergy
 - c. Department of Commerce
 - d. Xcel
3. Toll the time period to consider reconsideration petitions to ensure adequate time to issue an order.
4. Move to reconsider the Commission's February 5, 2015 order, pursuant to Minn. Stat. § 216B.25, for a limited purpose to:
 - a. Rehear matters regarding Xcel's Need (XLI, INV)
 - b. Rehear matters regarding contract terms (INV)
 - c. Revise selection of proposals (XLI, INV)
 - d. Indicate that in future proceedings the Commission will hold bidders to the terms and prices used to *evaluate* their bids (DOC)
 - e. Require Xcel to return to the Commission for preapproval of transmission costs for the Calpine facility if in excess of \$1.5 million (DOC)
 - f. Clarify the Department's Position on the consistency of the Calpine's final PPA terms with the information used to evaluate the bids (DOC)
 - g. Correct the Black Dog 6 Price Terms (Xcel, DOC)

Staff recommends: 1.d. 2.a., 2.b., 2.c., and 3.

Attachment A: Ordering Paragraphs, February 5, 2015 Commission Order

The Commission will so order.

ORDER

1. Regarding Geronimo's proposal:

- A. The Commission selects the proposal as a resource that fits Xcel's need and approves the power purchase agreement between Xcel and Aurora Distributed Solar, LLC, as set forth in Xcel's compliance filing of September 23, 2014, modified to substitute the following language for the original language in Article 6.1(A), as well as for the language in Exhibit A, "State Regulatory Agency(s)" and "State Regulatory Approval":

Article 6 – CONDITIONS PRECEDENT

6.1 Company CPs.

(A) On September 23, 2014, Company filed 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 order from the Minnesota Public Utilities Commission authorizing Company to execute this PPA, Company shall file this PPA with the North Dakota Public Service Commission. Seller shall cooperate with Company's effort to seek State Regulatory Approval.

(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.

Exhibit A -- DEFINITIONS

"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 prudent and/or in the public interest, and that those costs incurred by Company under this PPA as presently allocated by ratemaking mechanisms to Company's Minnesota and North Dakota jurisdictions are recoverable, in

the aggregate, from the Company's Minnesota and/or North Dakota retail customers. The preceding is subject only to the requirement that the State Regulatory Agency retains ongoing prudency review of Company's performance and administration of this PPA.

- B. Xcel shall execute Geronimo's power purchase agreement as amended and, within 10 days of the Commission's order in this matter, make a compliance filing with the executed power purchase agreement.
- 2. Regarding Calpine's proposal:
 - A. The Commission selects the proposal as a resource that fits Xcel's need and approves Xcel's draft power purchase agreement with Mankato Energy Center II, LLC.
 - B. In any request to recover costs related to this project, Xcel shall address the costs and benefits of the dispatchability payments.
 - 3. Regarding Xcel's Black Dog 6 proposal, the Commission selects the proposal as a resource that fits Xcel's need and approves the price terms.
 - 4. The Commission declines to select Invenergy's proposal.
 - 5. This Order shall become effective immediately.