

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
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In the Matter of the Petition of
Northern States Power Company d/b/a
Xcel Energy for Approval of Cost Recovery
of the Aurora Power Purchase Agreement

ISSUE DATE: April 13, 2016

DOCKET NO. E-002/M-15-330

DOCKET NO. E-002/M-16-223

In the Matter of Xcel Energy's Filing on
Jurisdictional Cost Issues

ORDER DENYING RECOVERY OF
NORTH DAKOTA-RELATED
PURCHASED-POWER COSTS

PROCEDURAL HISTORY

On October 20, 2015, Xcel Energy (Xcel or the Company) filed a petition for recovery of the North Dakota portion of the costs of the Aurora Distributed Solar Power Purchase Agreement (Aurora PPA) after those costs were disallowed by the North Dakota Public Service Commission.

On December 4, 2015, the Minnesota Department of Commerce (the Department) and Aurora Distributed Solar, LLC (Aurora) filed comments on Xcel's petition. The Department opposed the petition, while Aurora, the project's developer, supported the petition.

On January 8, 2016, Xcel, the Department, and Aurora filed reply comments.

On March 10, 2016, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

I. Summary of Commission Action

In this order, the Commission concludes that Xcel has not met its burden to establish that it is reasonable to recover the Aurora PPA's North Dakota-related costs from Minnesota ratepayers and therefore denies the Company's petition.

The Commission recognizes the potential for this issue to reoccur, and therefore directs Xcel to make a compliance filing outlining options and recommendations for addressing and resolving cost-recovery disputes among the states served by the Company's system.

II. Background

A. Xcel's 2012–2013 Competitive-Resource-Acquisition Process

In August 2010, Xcel filed a resource plan for the years 2011–2025, which included a forecast of energy and capacity requirements for its Upper Midwest system during the 15-year planning period.¹ Based on this forecast, the Commission found that Xcel would need an additional 150 megawatts (MW) of capacity by 2017, increasing up to 500 MW by 2019.²

In November 2012, the Commission ordered Xcel to begin a competitive-resource-acquisition process to solicit and evaluate proposals to meet the need identified in its resource plan.³ Xcel solicited bids in early 2013 and received five proposals:

- An independent power producer's proposal to construct a 345 MW natural gas generator;
- A second independent power producer's proposal to construct three 179 MW natural gas generators;
- Xcel's own proposal to construct three 215 MW natural gas generators, one at its Black Dog Generating Station in Burnsville and the other two near Hankinson, North Dakota;
- A generation and transmission cooperative's proposal to sell Xcel capacity credits through the regional electricity market operated by the Midcontinent Independent System Operator; and
- Geronimo Energy, LLC's proposal to construct solar panels at approximately 20 sites adjoining substations along Xcel's transmission or distribution lines, each site with a capacity of 2 to 10 MW, for an aggregate capacity of up to 100 MW (the Aurora project).

The Commission referred the matter to an administrative law judge (ALJ) to evaluate the proposals and make a recommendation.⁴ During the ensuing proceedings, Xcel testified that, based on recent forecasts, it was expecting less need for new capacity before 2019 than it had originally predicted in its resource plan. The ALJ nonetheless found that there remained sufficient capacity need to justify selecting the Aurora project. He recommended that the Commission select the Aurora project and solicit bids for generation needed in 2019 and beyond.⁵

¹ *In the Matter of Xcel Energy's 2011–2025 Integrated Resource Plan*, Docket No. E-002/RP-10-825. Xcel's Upper Midwest system encompasses portions of five states—Minnesota, North Dakota, South Dakota, Wisconsin, and Michigan.

² Docket No. E-002/RP-10-825, Order Approving Plan, Finding Need, Establishing Filing Requirements, and Closing Docket, at 6 (March 5, 2013).

³ *In the Matter of the Petition of Northern States Power Company to Initiate a Competitive Resource Acquisition Process*, Docket No. E-002/CN-12-1240, Order Closing Docket, Establishing New Docket, and Schedule for Competitive Resource Acquisition Process (November 21, 2012).

⁴ Docket No. E-002/CN-12-1240, Notice and Order for Hearing (June 21, 2013).

⁵ Docket No. E-002/CN-12-1240, Findings of Fact, Conclusions of Law, and Recommendation (December 31, 2013).

B. Selection of the Aurora Project

The Commission concurred with the ALJ's recommendation to select Geronimo's Aurora project, finding that it would cost-effectively support the reliability and adequacy of Xcel's power supply and advance state environmental goals.⁶ It ordered Xcel to negotiate a power purchase agreement with Geronimo.

The Commission further concluded that the level of demand demonstrated by the record was more than sufficient to justify selecting additional, natural-gas-powered generation.⁷ The Commission therefore ordered Xcel to negotiate power purchase agreements for the two natural gas proposals and to develop terms for its Black Dog proposal.⁸ The Commission stated that it would then determine which of these projects, if any, would best address Xcel's system's needs.

Xcel filed draft power purchase agreements, and in February 2015 the Commission ordered the Company to execute Geronimo's agreement (the Aurora PPA).⁹

C. Xcel's Petition for Rider Recovery of Aurora PPA Costs

On April 3, 2015, Xcel initiated this docket, filing a petition to recover Minnesota ratepayers' share of the Aurora PPA costs through its Fuel Clause Rider. The Company filed its petition under Minn. Stat. § 216B.1645, which allows utilities to seek approval of power purchase contracts entered into to satisfy Minnesota renewable energy objectives¹⁰ and to recover the costs of those contracts through a rider.

On August 20, the Commission granted Xcel's petition.¹¹ The Commission found that, although meeting renewable energy objectives was not the driving force behind the Aurora PPA, the project was nonetheless a reasonable and prudent part of Xcel's plan to meet its obligations under the Solar Energy Standard.

⁶ Docket No. E-002/CN-12-1240, Order Directing Xcel to Negotiate Draft Agreements with Selected Parties, at 34 (May 23, 2014).

⁷ *Id.* at 31.

⁸ *Id.* at 36.

⁹ *In the Matter of a Draft Purchased Power Agreement with Geronimo Wind Energy, LLC, d/b/a Geronimo Energy, LLC*, Docket No. E-002/M-14-788, Order Approving Power Purchase Agreement with Calpine, Approving Power Purchase Agreement with Geronimo, and Approving Price Terms with Xcel (February 5, 2015). In the same order, the Commission approved a power purchase agreement for a 345 MW gas generator and approved Xcel's Black Dog price terms.

¹⁰ These renewable energy objectives include the Renewable Energy Standard, Minn. Stat. § 216B.1691, subd. 2a, and the Solar Energy Standard, Minn. Stat. § 216B.1691, subd. 2f. The Renewable Energy Standard requires Xcel to supply at least 30 percent of its retail electric sales using eligible renewable energy technologies—solar, wind, hydroelectric, hydrogen, and biomass—by 2020. The Solar Energy Standard requires Xcel to supply at least 1.5 percent of its retail electric sales using solar energy in the same timeframe.

¹¹ Order Approving Power Purchase Agreement Under Minn. Stat. § 216B.1645, Subd. 1, Authorizing Cost Recovery Under Minn. Stat. § 216B.1645, Subd. 2, and Requiring Compliance Filing, this docket.

III. Xcel's Petition to Recover North Dakota Costs

On October 20, 2015, Xcel filed the petition now under consideration. The Company seeks the Commission's permission to recover from Minnesota ratepayers, in addition to the Minnesota-related costs that the Commission has already approved, a portion of the North Dakota-related costs of the Aurora PPA.

Xcel explained that, in February 2015, the Company had sought an advance determination of prudence from the North Dakota Public Service Commission to allow it to recover the North Dakota jurisdictional Aurora PPA costs through its North Dakota Fuel Cost Rider.¹² However, the North Dakota commission concluded that the Aurora project was not a prudent resource addition and denied Xcel's petition for an advance determination of prudence.

At the hearing before this Commission, Xcel clarified that under its proposal, North Dakota ratepayers would pay a "proxy" cost—Xcel's average system fuel cost—for that state's share of the power produced by the Aurora project. Minnesota ratepayers would make up the difference between the Aurora PPA's unit cost and the lower proxy cost. Although the total rate impact was not quantified in its petition, Xcel expects the cost to total as much as \$1 million over the PPA's 20-year term.

Xcel argued that its proposal is appropriate because the Aurora project represents a prudent approach to meeting a Minnesota-specific policy—specifically, the Solar Energy Standard. Xcel cited as precedent a 2011 Commission order allowing the Company to allocate to Minnesota the cost of grants awarded to developers of renewable-energy-production projects under its Minnesota Renewable Development Fund (RDF) program.¹³

Finally, Xcel described a letter agreement between the Company and Aurora that will affect cost recovery if the Commission denies Xcel's petition. The Aurora PPA allows either Xcel or Aurora to terminate the PPA if the Minnesota or North Dakota commission fails to approve recovery of its state's share of the PPA's costs. In the letter agreement, Xcel waived this termination right, and in exchange, Aurora agreed to reimburse Xcel if neither commission grants recovery of the North Dakota costs.

IV. Positions of the Parties

A. Aurora

Aurora supported Xcel's petition, arguing that Minnesota law allows recovery of the North Dakota costs of the Aurora PPA from Minnesota ratepayers. The developer argued that where a project or measure fulfills Minnesota statutory and policy objectives and there is unique benefit to Minnesota

¹² Traditionally, Xcel has allocated the cost of purchased power among states according to each jurisdiction's MWh (megawatt hour) sales. North Dakota's share of Xcel's purchased power is currently 5.5 percent.

¹³ *In the Matter of a Petition by Xcel Energy for Approval of a 2011 Renewable Development Fund Rate Rider Factor*, Docket No. E-002/M-10-1054, Order After Reconsideration Modifying March 17, 2011 Order and Reallocating Expenses (June 6, 2011). The RDF statute, Minn. Stat. § 116C.779, requires Xcel to maintain a fund to promote the development of renewable electric energy resources in Minnesota.

ratepayers, the Commission has discretion to allocate to Minnesota ratepayers costs that would ordinarily be allocated to North Dakota ratepayers.

Aurora stated that it was compelled to execute the letter agreement to eliminate Xcel's cancellation right if the North Dakota commission denied an advance determination of prudence. However, the developer insisted that its bid did not contemplate that it would bear the costs of Xcel's regulatory disallowances. And it argued that denying Xcel's petition would make it more difficult for renewable energy developers to build projects in Minnesota because of the uncertainty created and risk of PPA termination.

B. The Department

The Department recommended that the Commission deny Xcel's petition. The Department stated that the cost-effectiveness of the Aurora project had been analyzed in the context of Xcel's whole system and argued that there was no basis to find that the project would be a cost-effective resource for meeting the energy and capacity needs of only Minnesota ratepayers. And it stated that since Aurora has already agreed to pay the unrecoverable costs, Xcel has a market-based solution to address the revenue shortfall caused by North Dakota's decision.

Finally, responding to Xcel and Aurora's argument that the project will help the Company meet Minnesota's renewable-energy goals, the Department provided charts purporting to establish that the project will make only a minor contribution to Xcel's overall compliance with the Solar Energy and Renewable Energy Standards.

V. Commission Action

The Commission finds that Xcel has not met its burden to establish that its proposal will result in just and reasonable rates, and it further concludes that the 2011 RDF case provides no basis for departing from standard jurisdictional-cost-allocation practice in these circumstances. The Commission will therefore deny the Company's petition.

However, recognizing that this issue may reoccur, the Commission will direct Xcel to make a compliance filing outlining options and recommendations for the Company to address and resolve cost-allocation disputes among the states served by the Company's system.

A. Xcel Has Failed to Establish that Its Petition Will Result in Just and Reasonable Rates.

The touchstone of energy regulation in Minnesota is that "every rate made, demanded, or received by any public utility . . . shall be just and reasonable."¹⁴ Furthermore, a utility bears the burden to establish that its rates are just and reasonable, since "any doubt as to reasonableness should be resolved in favor of the consumer."¹⁵ Xcel has not shown that its proposal meets this standard.

¹⁴ Minn. Stat. § 216B.03.

¹⁵ *Id.*

The Company operates a single, integrated system covering portions of five states. The Aurora project was found to be a cost-effective resource addition in the context of Xcel's system as a whole. However, there is no data to support a finding that the project is a reasonable way to meet the needs of only Minnesota ratepayers.

Xcel has also failed to quantify the rate impact of its proposal, other than to state at hearing that the total cost to Minnesota ratepayers could be as much as \$1 million over the term of the PPA. The lack of detailed cost information complicates any effort to determine the reasonableness of the resulting rates.

Finally, even if Xcel had provided sufficient data in its petition, it is simply not just or reasonable for Xcel's Minnesota ratepayers to subsidize North Dakota ratepayers' consumption of solar energy. The solar energy generated by the Aurora project will carry with it numerous benefits, including but not limited to providing a hedge against rising fuel costs by supplying energy at a fixed price; avoiding the purchase of energy from other, polluting sources; avoiding the need to build additional power plant capacity to meet peak energy needs; and providing valuable experience integrating distributed solar into Xcel's system.

Xcel's proposed proxy for the Aurora project—its average system fuel cost—is less expensive but does not share solar power's beneficial characteristics. Thus, the Company's proposal would allow North Dakota ratepayers to enjoy the benefits of Aurora's solar power without paying its full cost.

B. The 2011 RDF Case Is Not Precedent for Xcel's Proposal.

Xcel cites the Commission's *Order After Reconsideration* in the Company's 2011 RDF rate rider proceeding as support for its proposed treatment of the Aurora costs. Under the RDF program, Xcel awards grants to promote the development of renewable energy resources in Minnesota. A substantial number of these grants fund proposals to generate electricity using renewable technologies.

In its 2011 RDF rider filing, Xcel sought approval to allocate the costs of these energy-production grants entirely to Minnesota. The Commission initially denied the request but, on reconsideration, concluded,

The Company correctly points out that these costs—unlike most system-wide utility costs—have a unique connection with Minnesota. They are incurred under Minnesota statutory mandates to promote state energy policies, and may not have been incurred without those mandates. There is therefore no danger that allocating the full 2011 costs to Minnesota ratepayers would create a worrisome precedent of allocating to Minnesota ratepayers costs disallowed in other jurisdictions, especially since the approval granted today is limited specifically to the facts underlying the record related to the 2011 rate rider.¹⁶

¹⁶ Docket No. E-002/M-10-1054, June 6, 2011 Order, at 2.

Xcel argues that the costs of the Aurora PPA, like the RDF costs, have a unique connection to Minnesota and should therefore be allocated entirely to Minnesota ratepayers.

The Commission disagrees. First, the energy-production costs at issue in the 2011 RDF case were grant payments, not payments under power purchase agreements.¹⁷ The 2011 RDF case thus does not establish a precedent for departing from the usual method of allocating purchased-power costs.

But perhaps more importantly, the Aurora project was selected because it was a cost-effective way to supply an identified capacity need—not because of a statutory mandate to promote state energy policies. The Commission made it clear in approving rider recovery of the Minnesota costs of the Aurora PPA that the driving force behind the project was not meeting renewable energy objectives but cost-effectively addressing the forecasted, system-wide capacity need.¹⁸ It would be unreasonable to charge Minnesota ratepayers the entire cost of a resource that benefits Xcel's whole system simply because the resource furthers, to some degree, Xcel's compliance with Minnesota energy policies.

For all these reasons, the Commission will deny Xcel's petition for recovery of North Dakota costs.

C. Compliance Filing Addressing Divergent State Energy Policies

Xcel stated that the issue of how to pay for energy projects whose costs are unrecoverable in one or more states is likely to arise again in the future. The Company's 2016–2030 resource plan includes proposals to add over 3,200 MW of large-scale wind and solar projects to its Upper Midwest system, all of which would require the approval of both the Minnesota and the North Dakota commissions.¹⁹

At hearing, Xcel offered to provide additional information to help the Commission understand Xcel's options to address future disputes of this nature. The Commission appreciates the Company's willingness to provide more information, and agrees that future decision-making would benefit from additional context. The Commission will therefore open a new docket and require Xcel to make a compliance filing outlining options and recommendations for the Company to address and resolve jurisdictional-cost-allocation disputes among the states served by the Company's system.

¹⁷ See Docket No. E-002/M-10-1054, March 17, 2011 Order, at 3 & n.5.

¹⁸ August 20, 2015 Order Approving Power Purchase Agreement, at 3, this docket.

¹⁹ Docket No. E-002/RP-15-21.

ORDER

1. The Commission hereby denies Xcel's petition with prejudice.
2. Within 60 days of this order, Xcel shall make a compliance filing in Docket No. E-002/M-16-223 outlining options and recommendations for addressing and resolving jurisdictional-cost-allocation disputes among the states served by Xcel's system.
3. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary



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