STATE OF MINNESOTA
BEFORE THE
PUBLIC UTILITIES COMMISSION

Beverly J. Heydinger	Chair
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
John Tuma	Commissioner
Matthew Schuerger	Commissioner

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	Docket Nos. E002/M-15-330 and E002/M-16-223
In the Matter of Xcel Energy's Filing on Jurisdictional Cost Issues	**PETITION FOR RECONSIDERATION**

INTRODUCTION

Aurora Distributed Solar, LLC ("Aurora") respectfully submits this petition for reconsideration of the Minnesota Public Utilities Commission's (the "Commission") April 13, 2016 *Order Denying Recovery of the North Dakota-related Power Purchase Costs* in Docket No. E002-M-15-330 (the "Order"). The Order denies the Petition of Northern States Power Company d/b/a Xcel Energy ("Xcel Energy") for recovery of the North Dakota portion of the costs of the Aurora Distributed Solar power purchase agreement (the "Aurora PPA", and collectively, the "Xcel Petition"). Aurora requests that the Commission grant reconsideration and amend its Order to remove the language "with prejudice" from Ordering Paragraph 1.

As the Commission acknowledged in its Order, the cost recovery issues raised in the Xcel Petition are likely to recur until such time where a comprehensive solution has been adopted to address the diverging state policy goals that exist within Xcel Energy's multi-jurisdictional service territory. Thus, Aurora requests that the Commission modify the Order to remove the words "with prejudice" so that costs and benefits of the Aurora PPA can be considered as a part

of that broader solution. Allowing the North Dakota portion of the costs related to the Aurora PPA to be considered again as part of a broader solution is more reasonable and equitable than singling out the Aurora PPA for disparate treatment, particularly where: (1) Minnesota law allows the Commission to revisit prior orders at any time; (2) Xcel Energy executed several other PPAs contemporaneous with the Aurora PPA that were also denied cost recovery in North Dakota but that will be included within a broader cost allocation solution; (3) the Commission acknowledged that it was Xcel Energy, not Aurora, that failed to meet its burden; however, under the Order, it is Aurora, and not Xcel Energy, that faces the consequences of Xcel Energy's failure; and (4) the Commission stated a desire to preserve the project benefits for ratepayers.

PROCEDURAL HISTORY

The procedural history related to the Aurora Distributed Solar Project (the "Aurora Project") and the Aurora PPA is extensive. Relevant portions are summarized here to provide context for this Petition.

On March 5, 2013, in Xcel Energy's 2011-2025 Integrated Resource Plan docket, the Commission found that Xcel Energy demonstrated the need for an additional 150 MW of capacity by 2017, increasing up to 500 MW by 2019.[1] Subsequently, the Commission solicited proposals to meet some or all of Xcel Energy's needs.[2]

On April 15, 2013, the Commission received competitive resource proposals from five bidders, including Calpine Corporation ("Calpine"), Geronimo Wind Energy, LLC d/b/a Geronimo Energy ("Geronimo"), Great River Energy ("GRE"), Invenergy Thermal Development, LLC ("Invenergy") and Xcel Energy. The competitive resource proposals

[1] *See* Docket No. E-002/RP-10-825.

[2] *See* Docket No. E-002/CN-12-1240.

consisted of multiple proposals: four non-renewable resource proposals from Calpine, GRE, Invenergy, and Xcel Energy, and one renewable resource solar proposal from Geronimo.

On March 25 and 27, 2014, the Commission met to consider the 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 address 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.

On September 23, 2014, Xcel Energy submitted a compliance filing that included an updated resource need assessment; draft PPAs with Calpine, Invenergy, and Geronimo; and Xcel Energy's Black Dog Unit 6 pricing. Xcel Energy's compliance filing did not request approval of the Aurora PPA, as Aurora had anticipated based on the Commission's May 23, 2014 Order, nor did Xcel Energy's filing include the cost recovery approval language typically included as part of a request for PPA approval.

In response, on October 23, 2014, since Xcel Energy did not seek approval and cost recovery of PPA, as is customary, Geronimo filed comments seeking approval for the Aurora PPA as consistent with the public interest and asked the Commission to approve cost recovery for Xcel Energy such that the condition precedent in Section 6.1 – requiring cost recovery approval – of the Aurora PPA would be satisfied. As articulated in Aurora's October and December comments, cost recovery approval was a critical element to provide Aurora with the contractual certainty it needed to continue to advance the Project, particularly given the time pressures imposed by the expiring federal investment tax credit ("ITC"), the regulatory hurdles expected in North Dakota and Aurora's December 31, 2016 in-service date requirements in the Aurora PPA.[3]

On February 5, 2015, the Commission issued an Order Approving Power Purchase Agreement with Calpine, Approving Power Purchase agreement with Geronimo, and Approving Pricing Terms with Xcel in Docket Nos. E-002/CN-12-1240, and E-002/M-14-788 (the "PPA Order"). In relevant part, the Commission affirmed its selection of the Geronimo proposal, finding that the Geronimo proposal "fits squarely within the criteria of Xcel's request for proposal and deserves to be considered alongside other proposals" in the present docket.[4] In addition, the Commission found that 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 throughout Xcel's operations, and

[3] Geronimo Energy's Comments and Request for Approval of and Cost Recovery for the Aurora PPA, *In re Petition of Northern States Power Company d/b/a Xcel Energy for Approval of Competitive Resource Acquisition Proposal, Docket No. E-002/CN-12-1240, and In the Matter of a Draft Power Purchase Agreement with Geronimo Wind Energy, LLC d/b/a Geronimo Energy*, Docket No. E-002/M-14-788 (October 23, 2014).

[4] PPA Order at 17.

from the tax credit."[5] 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.[6] The Commission then ordered Xcel Energy to execute the Aurora PPA within 10 days of the PPA Order.[7]

On the issue of cost recovery, the PPA Order discussed the parties' positions on the issue, but the Commission was silent with respect to Geronimo's cost recovery request.[8] Staff Briefing Papers leading up to the PPA Order noted that "In the present case—if [Xcel Energy] did not receive approval of recovery in other states and could demonstrate this to the Commission in a manner similar to its June 6, 2011 Order, the Commission would then be in a better position to support a finding to reallocate 100% of the costs to Minnesota ratepayers."[9]

On February 13, 2015, Xcel Energy filed a request with the North Dakota Public Service Commission ("NDPSC") for an advanced determination of prudence ("ADP") for the Aurora PPA and recovery of the North Dakota portion of the associated costs.[10]

On April 3, 2015, Xcel Energy filed its Petition for Aurora PPA Cost Recovery in the present docket, asking the Commission to determine that the Aurora PPA is a reasonable and prudent approach to meeting its obligations under Minnesota's Solar Energy Standard as

[5] PPA Order at 19.

[6] PPA Order at 19.

[7] PPA Order at 24.

[8] PPA Order at 11.

[9] Staff Briefing Papers, Docket Nos. E002/CN-12-1240, M-14-788, M-14-789 (December 1, 2014), at 27.

[10] NDPSC Case No. PU 15-095.

provided in Minn. Stat. § 216B.1645, and that the Commission approve its Minnesota-jurisdictional costs incurred under the Aurora PPA.

On May 4, 2015, Aurora filed comments asking the Commission to approve Xcel Energy's petition for cost recovery, again stressing that it was a critical step to ensuring the Aurora PPA is fully enforceable and financeable. Section 6.1 of the Aurora PPA contains a condition precedent whereby either Xcel Energy or Aurora can terminate the PPA if the Commission and the NDPSC, either separately or in the aggregate, have not approved recovery of all costs incurred under the Aurora PPA. Aurora stated that the ongoing existence of the termination right continued to present financing risk to Aurora, as Aurora had already made significant financial commitments, and had to continue to do so, to keep the Aurora Project on track to meet the December 2016 in-service date.

On August 20, 2015, the Commission issued its 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 (the "MN Cost Recovery Order"). The MN Cost Recovery Order stated:

> It is clear that the Aurora project is a reasonable and prudent part of Xcel's plan to meet its obligations under the solar energy standard. While that standard was not the driving force behind the contract, the contract fits squarely within the statutory parameters of the standard and will help satisfy the standard.
>
> The fact that this solar-generation project prevailed in a competitive bidding proceeding does not disqualify it from approval under Minn. Stat. § 216b.1645, subd. 1; the statute does not require that projects be uneconomic to qualify for approval. Nor does the statute require that the utility's only motive in acquiring the qualifying resource be to satisfy the renewable energy standard. Nor does it require a utility to demonstrate need beyond its intention to use the resource to meet the renewable energy standard.[11]

[11] MN Cost Recovery Order at 3.

On September 16, 2015, the NDPSC declined to issue an ADP for the Aurora Project, concluding that it was not a prudent resource addition. In its Findings of Fact, Conclusions of Law, and Order, the NDPSC stated that Xcel Energy brought forward "the [Aurora] PPA to meet Minnesota requirements and it is not the least-cost project" under North Dakota's resource planning criteria.[12] Further, the NDPSC noted that its staff recommended that the "costs and benefits of the [Aurora] PPA should not be allocated to the North Dakota jurisdiction."[13]

On October 20, 2015, Xcel Energy filed its Petition with the Commission seeking to recover the North Dakota-jurisdictional costs related to the Aurora PPA from Minnesota ratepayers.

On April 13, 2016, the Commission issued the Order. In the Order, the Commission concluded 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"[14] and denied Xcel Energy's request, with prejudice, on that ground.[15]

ANALYSIS

I. LEGAL STANDARD FOR RECONSIDERATION.

Pursuant to Minn. Stat. § 216B.27, subd. 3, the Commission may reverse, change, modify, or suspend its original decision if, after rehearing, it finds its decision unlawful or unreasonable. Minn. R. 7829.3000, subp. 2, states that a petition for reconsideration must set forth specifically the grounds relied upon or the errors claimed.

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[12] Findings of Fact, Conclusions of Law and Order, *In re Northern States Power Company Advance Prudence – 100 MW Aurora Solar, LLC Application*, Case No PU-15-095 (Sept. 16, 2015) at 3.

[13] *Id*.

[14] Order at 1.

[15] Order at 8.

II. IT IS UNREASONABLE TO EXCLUDE THE NORTH DAKOTA-RELATED COSTS AND BENEFITS OF THE AURORA PPA FROM INCLUSION IN BROADER COST ALLOCATION POLICY SOLUTIONS.

A. The Language "With Prejudice" Is Unnecessary and Seemingly Precludes Further Discussion of Allocation of the North Dakota-Portion of Costs and Benefits of the Aurora PPA.

Ordering Paragraph 1 of the Order states:

> 1. The Commission hereby denies Xcel's petition with prejudice.[16]

Black's Law Dictionary defines "with prejudice" as "with loss of all rights; in a way that finally disposes of a party's claim and bars any future action on that claim."[17] As written, the Order appears to preclude Xcel Energy or Aurora from bringing the issue of cost recovery of the North Dakota-portion of the Aurora PPA back to the Commission at a later date.

Inclusion of the language "with prejudice" is unusual[18] and contrary to the language of Minn. Stat. § 216B.25, which makes all Commission actions subject to further action upon the Commission's own motion or the motion of a party.[19] In the Order, the Commission provides no justification for including the words "with prejudice." To the contrary, the Order points out that

[16] Order at 8 (emphasis added).

[17] Black's Law Dictionary (10th ed. 2014).

[18] It appears from a search of eDockets that the Commission has previously included the words "with prejudice" only a handful of times, and then, typically in the context of dismissal of a complaint or in response to a settlement. *See, e.g.,* Order Dismissing Case with Prejudice*, In the Matter of the Petition by Renewable Energy SD, LLC for Resolution of Cogeneration and Small Power Production Disputes with Benco Electric Cooperative, Federated Rural Electric Association, Meeker Cooperative Light & Power Association, Nobles Cooperative Electric, and Tri-County Electric Cooperative Under Minn. Stat § 216B.164, subd. 5,* Docket No. E-104,114,121,126,145/CG-12-146 (July 13, 2013) and Order Approving Settlement and Dismissing Compliant, *In the Matter of the Complaint by Qwest Communications Company Against Tekstar Communications, Inc. Regarding Traffic Pumping*, Docket No. P-5096, 5542/C-09-265 (February 27, 2013).

[19] Minn. Stat. § 216B.25, *stating* "the commission may at any time, on its own motion or upon motion of an interested party, and upon notice to the public utility and after opportunity to be heard, rescind, alter, or amend any order fixing rates, tolls, charges, or schedules, or any other order made by the commission, and may reopen any case following the issuance of an order therein, for the taking of further evidence or for any other reason."

issues similar to the one presented in the Xcel Petition are likely to reoccur[20] and requires Xcel Energy to file a compliance filing "outlining options and recommendations for addressing and resolving jurisdictional-cost-allocation disputes among the states served by Xcel's system."[21] Aurora should be a part of, not potentially barred from, Xcel's options and recommendations that are filed as a result of this Order.

Accordingly, the Commission should remove the words "with prejudice" from its Order because it is inconsistent with the Commission's practice to foreclose additional action on an issue, particularly one where the Commission itself acknowledged that additional information and discussion would be necessary and useful, both to make a determination as to the reasonableness of cost recovery with respect to the Aurora PPA and to inform the broader interstate cost-allocation discussion.[22]

B. The Order Unreasonably Treats Aurora Differently Than Similarly-Situated Developers.

The Commission, Xcel Energy and Aurora all acknowledged at the March 10, 2016 Commission meeting that, to a large extent, Aurora is caught in the middle of a much larger policy debate as to how costs should be allocated among the states in Xcel Energy's multi-jurisdictional integrated system. With the exception of its treatment by Xcel Energy and this Commission, however, Aurora is not alone in the middle.

Contemporaneous with its selection of the Aurora Project and the initial approval of the Aurora PPA, the Commission also approved a PPA with Mankato Energy Center, LLC, an

[20] Order at 5.

[21] Order at 8.

[22] Order at 7.

affiliate of Calpine, for a 345 MW combined cycle natural gas plant (the "Calpine PPA").[23] The Calpine PPA had similar termination rights as the Aurora PPA, allowing either party to terminate the PPA by April 1, 2016[24] if 100 percent of the costs of the Calpine PPA were not approved for recovery by Minnesota and/or North Dakota. Accordingly, Xcel Energy also sought cost recovery approval of the Minnesota-portion of the Calpine PPA from this Commission and an ADP from the NDPSC.[25]

On March 23, 2016, the NDPSC dismissed without prejudice Xcel Energy's ADP request, relying on the PSC Staff's assessment that the Calpine PPA was not designed to meet an identified need in the near future. Xcel Energy agreed to a dismissal without prejudice, rather than a denial, because dismissal without prejudice would defer a final decision on the Calpine PPA until the next North Dakota rate case.[26]

In a letter dated March 29, 2016, Xcel Energy stated that it had waived its right to terminate the Calpine PPA in exchange for Calpine's approval of the NDPSC's dismissal without prejudice.[27] The Calpine PPA also provided that if the NDPSC denied Xcel Energy's request for cost recovery, Xcel Energy would be required to file a request with the Commission to recover the North Dakota portion of its costs.[28] Because there has been no final determination

[23] PPA Order (February 5, 2015).

[24] Update of Northern States Power Company d/b/a Xcel Energy *In re Competition Resource Acquisition – Thermal*, Docket Nos. E002/CN-12-1240 and E002/M-14-789 (March 29, 2016).

[25] *In re Request of Northern States Power Company d/b/a Xcel Energy for Approval of an Advance Determination of Prudence for a Power Purchase Agreement with Mankato Energy Center, LLC for Approximately 345 MW of Combined-Cycle Natural Gas Generation,* Case No. PU-15-096 (February 13, 2015).

[26] Update of Northern States Power Company d/b/a Xcel Energy *In re Competition Resource Acquisition – Thermal*, Docket Nos. E002/CN-12-1240 and E002/M-14-789 (March 29, 2016).

[27] *Id.*

[28] *Id.*

on cost recovery in North Dakota, Xcel Energy confirmed that it would not be seeking to recover costs from Minnesota ratepayers at this time. Finally, although Xcel Energy cautioned that the NDPSC's decision "presents some commercial risk for [Xcel Energy]," it also noted that "[t]he Calpine PPA remains an integral part of our current Resource Plan (Docket No. E002/RP-15-12)."[29]

To summarize, Calpine was in exactly the same contractual and regulatory position as Aurora. However, Xcel Energy chose to negotiate a waiver of the termination right in exchange for the ability to pursue recovery at a later date with Calpine, and Xcel Energy shoulders the financial consequences of cost recovery denial. In contrast, during its negotiations with Aurora, Xcel Energy did not extend the same terms to Aurora that it offered Calpine. Instead, Xcel Energy offered a waiver of the termination right only if Aurora would agree to shoulder the financial consequences. Xcel Energy's PPA-negotiation strategies with the winning bidders appear to match the positions that Xcel Energy held with respect to those bidders throughout the competitive resource acquisition docket – Xcel Energy supported selection of the Calpine resource and opposed selection of the Aurora Project.[30]

In addition to the Aurora and Calpine PPAs, Xcel Energy also negotiated and executed three solar energy PPAs in late 2015 (the "Solar RFP PPAs").[31] The Solar RFP PPAs were selected under a Track 1 competitive bid process where Xcel Energy was not a bidder and instead selected the resources and brought them to the Commission for approval. Each of these

[29] *Id.*

[30] *See, e.g.,* Initial Post-hearing Brief of Northern States Power Company d/b/a Xcel Energy *In re 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. E002/CN-12-1240 (November 22, 2013), at 30-32 and 45.

[31] Petition of Northern States Power Company d/b/a Xcel Energy *In re Approval of a Solar Portfolio to Meet Initial Solar Energy Standard Compliance*, Docket No. E002/M-14-162.

Solar RFP PPAs also had similar termination rights related to regulatory approvals in Minnesota and North Dakota. The Commission approved Xcel Energy's request for cost recovery of the Minnesota-portion of the Solar RFP PPAs,[32] and the NDPSC denied Xcel Energy's request for ADPs for all three Solar RFP PPAs.[33] Despite the fact that the NDPSC denied Xcel Energy's ADP requests for the Solar RFP PPAs prior to its denial of the Aurora PPA, Xcel Energy chose not to exercise its termination rights under those contracts.[34] As it did with the Calpine PPA, Xcel Energy has chosen not to seek cost recovery approval of the North Dakota-portion of the Solar RFP PPA costs from Minnesota ratepayers. Accordingly, Xcel Energy is shouldering the financial consequences related to cost recovery of the North Dakota-portion of the Solar RFP PPAs as well.

Finally, as the Order points out, in its 2016-2030 Resource Plan, Xcel Energy proposes adding 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.[35] Accordingly, each of the resources selected to meet these needs, whether selected by the Commission through a Track 2 process or by Xcel Energy through a Track 1 process, will find

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[32] Order Approving Solar Portfolio, *In re In the Matter of Xcel Energy's Petition for Approval of a Solar Portfolio to Meet Initial Solar Energy Standard*, Docket No. E-002/M-14-162 (March 24, 2015), at 10.

[33] Findings of Fact, Conclusions of Law and Order, *In re Northern States Power Company Advance Prudence – 187 MW Solar Energy Portfolio Application*, Case No. PU-14-810 (June 17, 2015), at 4.

[34] Northern States Power Company, d/b/a Xcel Energy Compliance Filing *In re In the Matter of Northern States Power Company, d/b/a Xcel Energy's Request for Approval of the Costs of Up-To 100 MW Aurora Power Purchase Agreement (PPA) that the Company Has Entered Into With Geronimo Energy Inc.* Docket No. E002/M-15-330 and *In the Matter of Utilities' Annual Reports on Progress in Achieving the Solar Energy Standard*, Docket No E999/M-15-462 (February 12, 2016).

[35] Order at 7, *citing* Docket No. E-002/RP-15-21.

itself squarely in the middle of this broad policy debate regarding cost allocation within Xcel Energy's multi-jurisdictional integrated system.

However, based on the Order, as among all of the known and potential resources caught in the middle of this policy debate, the Aurora Project is the only resource that has been required to bear the associated financial burdens, and only the Aurora Project has been precluded from being a part of any future policy solutions. Aurora respectfully submits that it is unreasonable to treat the Aurora Project differently from similarly-situated resources, and the Order arbitrarily does so without providing any supporting justification.

C. It is Unreasonable to Exclude Aurora From Future Cost Allocation Solutions when Xcel Energy, Not Aurora, Failed to Meets its Burden in the Present Docket.

The Order states that the Commission denied the Petition because Xcel Energy did not meet its burden in this case. The Order notes that "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.""[36] While the Order discusses the numerous benefits of the Aurora Project "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",[37] the Order finds that Xcel Energy failed to quantify the rate impact of its proposal and, even if it had provided sufficient rate data, it "simply is not just or reasonable for Xcel's Minnesota ratepayers to subsidize North Dakota

[36] Order at 5, *citing* Minn. Stat. § 216B.03.

[37] *Id.*

ratepayers' consumption of solar energy."[38] In other words, the Commission found that Xcel Energy provided insufficient data to demonstrate that the benefits of the Aurora Project would be retained by retained by Minnesota ratepayers and would outweigh the impacts of allocating the costs of North Dakota ratepayers' consumption of solar energy to Minnesota ratepayers.

Notably, all of the lacking data is squarely within the knowledge and control of Xcel Energy as the owner and operator of its multi-jurisdictional integrated system. While Aurora provided record evidence of the Aurora Project's benefits during the resource acquisition process, Aurora does not possess information related to ratepayer impacts nor is it in a position to allocate or quantify the benefits among Xcel Energy's various jurisdictions. Aurora simply could not have provided the data the Commission was looking for to inform its decision. And, while the Minnesota Department of Commerce, Division of Energy Resources ("DOC-DER"), typically engages in discovery to help build a record regarding these types of issues, in this case, it simply recommended denial of the Xcel Petition and did not engage in any meaningful discovery.

Despite the fact that it was Xcel Energy, not Aurora, that did not meet its burden, Aurora bears the full financial brunt of the Commission's Order. Moreover, the Order forecloses the opportunity for Aurora to participate in any larger policy solution that addresses similarly-situated resources. Presumably, as a result of the Commission's decision in this docket, Xcel Energy will be in a better position to provide more detail regarding ratepayer impacts and allocation of benefits for the Calpine PPA and Solar RFP PPAs, PPAs for which Xcel Energy currently bears the financial risks, when it brings forward options and solutions for broader policy fixes. Aurora is simply asking to be allowed to be a part of that discussion.

[38] Order at 6.

The letter agreement Aurora executed with Xcel Energy was, based on Aurora's business judgment and Xcel Energy's prior actions and positions, necessary to avoid termination of the Aurora PPA and loss of the millions of dollars Aurora had already invested in the Aurora Project to meets its contractual obligations. The letter agreement requires Aurora to reimburse Xcel Energy for unrecovered costs related to denial of the North Dakota-portion of costs of the Aurora PPA until such time as there is regulatory approval allowing recovery of those costs. Accordingly, if the Commission removes the words "with prejudice" from its Order, both Xcel Energy and Aurora will continue to be required to meet all obligations under the Aurora PPA, and Aurora will meet its additional obligations under the letter agreement. However, to the extent costs related to the Aurora PPA are included within a broader cost allocation solution, the letter agreement provides the flexibility for the parties to fully participate in that solution.

As the Order recognizes, the Aurora Project was approved to because it cost-effectively supports the reliability and adequacy of Xcel Energy's power supply and advances Minnesota's environmental goals.[39] Aurora is simply asking that it not be precluded from participating in, and potentially benefiting from, the current cost allocation policy debate occurring among the states in Xcel Energy's integrated system.

III. CONCLUSION

Aurora respectfully requests that the Commission reconsider its Order and modify Ordering Paragraph 1 to remove the words "with prejudice." This modification would allow the Commission to revisit the cost recovery of the North Dakota-portion of the Aurora PPA in the context of a broader policy solution and, doing so, treat the Aurora similarly to other developers

[39] Order at 3.

that have recently executed PPAs with Xcel Energy. It would also help ensure that the benefits of the Aurora Project are appropriately retained for ratepayers and the State of Minnesota.

Dated: May 3, 2016

Respectfully submitted,

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