

May 13, 2016

Daniel P. Wolf  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7th Place East, Suite 350  
St. Paul, Minnesota 55101-2147

RE: **Petition for Reconsideration**  
Docket No. E002/M-15-330

Dear Mr. Wolf:

Attached are the comments of the Minnesota Department of Commerce-Division of Energy Resources (Department) in the following matter:

Petition for Reconsideration.

The petitioner is:

Christina K. Brusven  
Attorney at Law  
Fredrikson & Byron, P.A.  
200 South Sixth Street, Suite 4000  
Minneapolis, Minnesota 55402-1425

The Department recommends the Commission **deny reconsideration**. The Department is available to answer any questions the Minnesota Public Utilities Commission may have.

Sincerely,

/s/ STEVE RAKOW  
Rates Analyst

SR/ja  
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE  
MINNESOTA DEPARTMENT OF COMMERCE  
DIVISION OF ENERGY RESOURCES

DOCKET No. E002/M-15-330

I. INTRODUCTION

On April 13, 2016 the Minnesota Public Utilities Commission (Commission) issued its *Order Denying Recovery of North Dakota-related Purchased-Power Costs* (Order) in Docket Nos. E002/M-15-330 and E002/M-16-223.

Pursuant to Minnesota Rules 7829.3000 subpart 1,<sup>1</sup> on May 3, 2016 Aurora Distributed Solar, LLC (Aurora) filed its *Petition for Reconsideration* (Petition). Aurora's Petition requests that the Commission amend the Order to remove the language "with prejudice" from Ordering Paragraph 1. Aurora requests reconsideration on three grounds:

1. the "with prejudice" language is unnecessary;
2. the Order treats similarly-situated developers differently; and
3. it is unreasonable to exclude Aurora from future cost allocations because Northern States Power Company d/b/a Xcel Energy (Xcel) failed to meet its burden of proof in the current docket.

II. ANALYSIS

A. CRITERIA FOR RECONSIDERATION

Minnesota Rules 7829.3000 subpart 2 states that a petition for:

...rehearing, amendment, vacation, reconsideration, or reargument must set forth specifically the grounds relied upon or errors claimed. A request for amendment must set forth the specific amendments desired and the reasons for the amendments.

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<sup>1</sup> Minnesota Rules 7829.3000 subpart 1 states "A party or a person aggrieved and directly affected by a Commission decision or order may file a petition for rehearing, amendment, vacation, reconsideration, or reargument within 20 days of the date the decision or order is served by the executive secretary."

Therefore, the Minnesota Department of Commerce (Department) reviewed Aurora's Petition to determine if the Petition raised significant new issues, pointed to new and relevant evidence, or exposed errors in the Order.

**B. RECONSIDERATION REQUESTS**

**1. Unnecessary Language**

Aurora claims that:

In the Order, the Commission provides no justification for including the words "with prejudice." To the contrary, the Order points out that issues similar to the one presented in the Xcel Petition are likely to reoccur 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." Aurora should be a part of, not potentially barred from, Xcel's options and recommendations that are filed as a result of this Order.

The Department reviewed the Order and concludes that the Order clearly establishes a process to investigate various methods for resolving jurisdictional-cost-allocation disputes *on a going-forward basis*. That is, the Department understands that the Order does not intend to find a method for resolving jurisdictional-cost-allocation disputes and then apply that method retroactively to past disputes. Establishing an investigation combined with denial with prejudice reasonably prevents issues that have already been addressed by the Commission from inappropriately being brought up again in a separate proceeding.

Overall, Aurora provides little evidence that Aurora's preference that the Commission engage in a backward-looking process rather than the forward-looking process created by the Order would result in a better outcome. In summary, the Petition did not raise significant new issues, point to new and relevant evidence, or expose errors in the Order regarding the necessity of the "with prejudice" language.

**2. Similarly Situated Developers**

Aurora claims that similarly situated developers are being treated differently. However, for the following reasons, it is not appropriate to bring this claim to this Commission. First, Aurora's Petition provides a history of Xcel's Commission-approved purchased power agreement (PPA) with Mankato Energy Center II, LLC, a subsidiary of Calpine Corporation (Calpine). However, the Petition's history demonstrates that, at this time, both Calpine and Aurora have the exact same status before the Commission. The North Dakota Public Service Commission has not approved Xcel's petitions regarding either Calpine's or Aurora's project and Minnesota ratepayers are not paying North Dakota's share of the costs of either

Calpine's or Aurora's project. Thus, while Xcel may have pursued different regulatory strategies for the Calpine and Aurora PPAs, there is no evidence in this record that the Commission treated the two projects differently.

Second, Aurora discusses the results of Xcel's request for proposals (RFP) to obtain projects to meet Minnesota's Solar Energy Standard (SES).<sup>2</sup> Aurora claims that Aurora's project, selected in Docket No. E002/CN-12-1240, has been treated unreasonably differently from the projects selected in the SES RFP (Docket No. E002/M-14-162). However, Aurora's claims are inaccurate, for several reasons.

First, the two dockets addressed different needs. The Commission's March 24, 2015 order in Docket No. E002/M-14-162 described Xcel's SES RFP petition as a "petition for approval of a 187-MW solar portfolio to meet its obligation under the Solar Energy Standard<sup>3</sup> to obtain 1.5% of its retail electricity sales from solar energy by 2020." Thus, the need in E002/M-14-162 was driven by Minnesota policy. In contrast, the process that selected Aurora's project in Docket No. E002/CN-12-1240 was designed to obtain projects to meet the needs of Xcel's entire system.<sup>4</sup> Thus, as the Commission's Order at 7 made clear, the need in E002/CN-12-1240 was driven by Xcel's system as a whole.

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.<sup>[footnote omitted]</sup> 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.

In this case the different needs being addressed by the resource acquisition processes may justify different treatment during the subsequent cost recovery processes:

Second, Aurora's Petition stated:

The Commission approved Xcel Energy's request for cost recovery of the Minnesota-portion of the Solar RFP PPAs, and the NDPSC denied Xcel Energy's request for ADPs for all three Solar RFP PPAs. Despite the fact that the NDPSC denied Xcel

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<sup>2</sup> See Docket No. E002/M-14-162.

<sup>3</sup> Minn. Stat. § 216B.1691, subd. 2f.

<sup>4</sup> See the Commission's March 5, 2013 *Order Approving Plan, Finding Need, Establishing Filing Requirements, and Closing Docket* in Docket No. E002/RP-10-825 and May 23, 2014 *Order Directing Xcel to Negotiate Draft Agreements with Selected Parties* in Docket No. E002/CN-12-1240.

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. 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. [citations omitted]

Thus, assuming Aurora's facts are correct, Aurora's Petition demonstrated that, to date, the Commission has treated both the Aurora PPA and the projects selected through the SES RFP in the same manner. Aurora argued that the Commission has approved recovery of Minnesota's share of the costs for all projects and has not approved recovery of North Dakota's share of the costs for any project. This fact demonstrates that there is no evidence in this record that the Commission treated the Aurora project differently than other similarly situated projects.

In summary, the Petition did not raise significant new issues, point to new and relevant evidence, or expose errors in the Order regarding the Commission treating similarly-situated developers differently.

### *3. Excluding Aurora from Future Cost Allocations*

Aurora's Petition stated that:

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 [sic] 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.

Again Aurora's claim is not a claim of failure on the part of the Commission.

Additionally, Aurora stated that "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." However, Aurora's claim misrepresents the Department's analysis in this proceeding and in the E002/CN-12-1240 proceeding.

For example, the Department stated at page 3 of its December 4, 2015 comments in this proceeding that:

One presumption of Xcel's petition is that all of the costs of a resource that was selected within a process designed to acquire the best resource for Xcel's Northern States Power integrated system<sup>[footnote omitted]</sup> should now be charged only to Minnesota ratepayers. There is no evidence anywhere in the extensive record of Docket No. E002/CN-12-1240 or this proceeding that Aurora's project would (or would not) be a cost effective resource to meet the energy and capacity needs of only Xcel's Minnesota ratepayers. All of the analysis comparing the various alternatives was done assuming the energy and capacity needs of Xcel's entire system. Further, Xcel's Petition provides no basis to determine that Aurora's project would be a reasonable resource for meeting only the general energy and capacity needs of Xcel's Minnesota ratepayers. **A different bidding process would have been required to examine the new presumption in Xcel's petition.**

The Department concludes that there is no basis to determine whether the Aurora PPA is a reasonable resource for meeting the general energy and capacity needs of Xcel's Minnesota ratepayers. (Emphasis added)

Aurora did not adequately address this issue in its reply comments. Aurora merely stated in its January 8, 2016 reply comments that: "The Commission did not rely solely on the Department's analysis in selecting the Aurora PPA, and the scope of the Department's prior analysis should not be relied upon as justification for denying Xcel's Petition." Thus, Aurora's claim in reconsideration about the importance of the Department's analysis contradicts Aurora's earlier claim about its lack of importance.

Aurora also ignores an important fact in this proceeding, which was discussed in the Department's December 4, 2015 comments:

Moreover, Xcel states in its filing that the Company:

...arranged a Letter Agreement with the project developer (Aurora Distributed Solar, LLC, a wholly-owned subsidiary of Enel Green Power North America), in which the Company waived its right under the condition precedent of the PPA to terminate the agreement and the developer agreed to reimburse the Company for North Dakota's jurisdictional share of the project costs if the Minnesota Commission declines this petition request.

Since there is already a market solution to address the effects of North Dakota's decision for its jurisdiction, namely that Enel Green Power will pay for that share of the costs, it is not reasonable to require Minnesota ratepayers to pay for those costs. Therefore, the Department recommends that the Commission reject Xcel's petition.

In summary, Aurora has not raised significant new issues, pointed to new and relevant evidence, or exposed errors made by the Commission.

### **III. DEPARTMENT RECOMMENDATION**

The Department recommends that the Commission reject Aurora's Petition for Reconsideration.

/ja

## **CERTIFICATE OF SERVICE**

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce**  
**Comments**

**Docket No. E002/M-15-330**

**Dated this 13<sup>th</sup> day of May 2016**

**/s/Sharon Ferguson**



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