

Minnesota Public Utilities Commission
Staff Briefing Papers

Meeting Date: **June 17, 2016** **Agenda Item # 2****

Company: Xcel Energy

Docket No. E002/M-15-330 and E002/M-16-223

**In the Matter of the Petition of Northern States Power Company d/b/a Xcel
Energy for Approval of Cost Recovery of the Aurora PPA Pursuant to Minn.
Stat. § 216B.1645**

Issue(s): Should the Commission grant the petition for reconsideration of the Commission's
April 13, 2016 *Order Denying Recovery of the North Dakota-related Power
Purchase Costs*?

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Relevant Documents

Commission Order – Denying Recovery of ND-related PPA Costs April 13, 2016
Aurora Distributed Solar – Petition for Reconsideration..... May 3, 2016
Department – Comments..... May 13, 2016

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 Issue

Should the Commission grant the petition for reconsideration of the Commission's April 13, 2016 *Order Denying Recovery of the North Dakota-related Power Purchase Costs*?

II. Relevant Law

Petitions for reconsideration are subject to Minn. Stat. § 216B.27 and Minn. Rules part 7829.3000. Petitions for reconsideration are denied by operation of law unless the Commission takes action within sixty days of the request. If the Commission takes no action on the May 3, 2016 Petition for Reconsideration (Petition), the request would be considered denied as of June 27, 2016. The Commission may also take specific action to deny the petition.

Minn. Stat. § 216B.27, Subd. 1, provides that the Commission may grant a rehearing if it believes sufficient reason exists.

Subd. 2 requires that the application for a rehearing shall set forth specifically the grounds on which the applicant contends the decision is unlawful or unreasonable.

Subd. 3 provides that if after rehearing it appears that the original decision, order, or determination is in any respect unlawful or unreasonable, the Commission may reverse, change, modify, or suspend the original action accordingly.

III. Background

On April 3, 2015, Northern States Power Company d/b/a Xcel Energy (Xcel) petitioned the Commission for approval of Minnesota-jurisdictional costs of the Aurora Power Purchase Agreement (Aurora PPA). The Aurora PPA is for 100 MW of distributed solar energy. The project was selected through a competitive resource acquisition process which solicited and evaluated proposals to meet Xcel's capacity need identified in its 2011-2025 Integrated Resource Plan.

On August 20, 2015, the Commission approved the Aurora PPA and found that while meeting renewable energy objectives was not the principal purpose of 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 (SES). Therefore the Commission authorized cost recovery of the Minnesota-jurisdictional portion of the Aurora PPA through the fuel clause rider, pursuant to Minn. Stat. § 216B.1645, Subd. 2.

On October 20, 2015, Xcel Energy filed a petition for recovery of a portion of the North Dakota-jurisdictional costs of the Aurora PPA (ND Cost Petition) after those costs were not granted an Advanced Determination of Prudence (ADP) by the North Dakota Public Service Commission (ND PSC).¹ Xcel argued that the Aurora project represented an approach to meeting a Minnesota-specific policy (the Solar Energy Standard (or SES)) and therefore, it would be reasonable for Minnesota ratepayers to bear this incremental cost.

¹ 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's PPA's unit cost and the lower proxy cost. The rate impact was not quantified in the petition.

Additionally, Xcel described a letter agreement between itself and Aurora Distributed Solar, LLC (Aurora) providing that Aurora would bear North Dakota-related costs of the Aurora PPA if both MN and ND Commissions rejected recovery of those costs from MN and ND ratepayers (Letter Agreement). This concession was in exchange for Xcel not exercising certain PPA termination rights relating to unrecovered costs.

On April 13, 2016, the Commission issued its *Order Denying Recovery of North Dakota-Related Purchased-Power Costs* (Order). The Order denied Xcel's Petition with prejudice.

The Order first provided that Xcel had not met its burden to establish that it is reasonable to recover the Aurora PPA's North Dakota-related costs from Minnesota ratepayers. The Commission found that Xcel's request for recovery provided (1) no data to determine whether the proposal was a reasonable way to meet the needs of only Minnesota ratepayers (the analysis finding the Aurora Project a cost-effective proposal was conducted on a system-wide basis) and (2) no quantification of the specific rate impact of the proposal in its filings. The Commission concluded that even if Xcel had provided sufficient data in its proposal, it was not just or reasonable for Xcel's Minnesota ratepayers to subsidize North Dakota ratepayers' consumption of solar energy.

In light of the likelihood that this jurisdictional issue would reoccur with respect to future resource additions to Xcel's system, the Commission instructed Xcel to file a compliance filing outlining options and recommendations for Xcel to take to address and resolve jurisdictional-cost-allocation disputes among the states served by the Company's system.²

On May 3, 2016, Aurora filed its Petition for Reconsideration (Petition).

IV. Aurora's Petition for Reconsideration

Aurora makes three main claims, the principal claim being that it is unreasonable to exclude the North Dakota-related costs and benefits of the Aurora PPA from inclusion in any future cost allocation policy solutions that may be presented to the Commission in its upcoming compliance filing. Aurora requested that the Commission reconsider its Order and remove the "with prejudice" language in Ordering paragraph 1. Aurora's three claims are summarized below.

- 1) **Use of "with prejudice."** Aurora argued that the use of the language 'with prejudice' is:
 - unnecessary and seemingly precludes further discussion of the allocation of the North Dakota-portion of costs and benefits of the Aurora PPA;
 - unusual for use in Commission orders;
 - unsupported in the Commission's April 13 Order (and contrary to the order language); and
 - contrary to 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.
- 2) **Equal treatment of similarly-situated developers.** Aurora argued that Xcel and the Commission are treating the Aurora project differently from similarly-situated resources

² As of the submittal of this brief, the report is past due. Staff has inquired of its status from Xcel.

(specifically, the Calpine/Mankato Energy Center and projects selected from Xcel's Solar Request for Proposal Projects³ (Solar RFP)).

Aurora argued (1) Xcel has treated projects differently by *not* choosing to exercise its termination rights under the Calpine and Solar RFP PPAs choosing to do so under the Aurora PPA, and (2) the Commission has treated similarly-situated developers differently by way of its Order (by excluding only Aurora from future interstate cost-allocation discussions or solutions).

- 3) **Xcel's burden and failure to demonstrate Aurora costs and benefits.** Aurora argued that it was Xcel's burden and failure, not Aurora's, to provide sufficient data to demonstrate that the benefits of the Aurora Project would be retained by Minnesota ratepayers – and Aurora could not have provided that information. Additionally, Aurora argued the Department of Commerce – Division of Energy Resources (Department) did not engage in its typical discovery process and instead simply recommended denial.

Aurora argued that Xcel's failure should not preclude Aurora from participation in future interstate cost-allocation discussions or solutions.

V. Response to Petition for Reconsideration

Only the Department provided reply comments. Xcel did not comment on the reconsideration Petition.

A. Department of Commerce – Division of Energy Resources

The Department addressed each claim of Aurora and concluded that its Petition did not raise significant new issues, point to new or relevant evidence, or expose errors in the Order regarding the “with prejudice” language. The Department's comments, which are only summarized here, are thorough and provide concise responses to Aurora's claims.

- 1) **Use of “with prejudice.”** The Department argued that the Commission's Order clearly established a process to investigate methods for resolving jurisdictional-cost-allocation disputes on a going-forward basis, and denying Xcel's ND Cost Petition with prejudice prevents issues that have already been decided by the Commission from being inappropriately brought up again in any future proceeding.
- 2) **Equal treatment of similarly-situated developers.** The Department argued that contrary to Aurora's claims, both the Calpine Mankato Energy Center and the Aurora Project have the same status before the Commission: neither has been approved by the ND PSC, and the ND-jurisdictional costs of neither PPA are being borne by Minnesota ratepayers. The Department noted that the only way in which the two developers are being treated differently is by Xcel, who has elected to pursue different regulatory approval strategies with the developers' PPAs. The Department stated that there was no evidence in the record (or Petition) that the Commission treated the projects differently.

³ Commission Docket 14-162

In relation to the Solar RFP projects, Department noted that the Aurora and Solar RFP projects were approved pursuant to different solicitation processes initiated for different purposes (resource addition to meet Xcel's capacity need versus resource additions to meet Xcel's SES requirements). To date, the Commission has treated both the Aurora project and the Solar RFP project the equally. The Commission *has* authorized recovery of the Minnesota-jurisdictional portions of the projects from Minnesota ratepayers and *has not* authorized the recovery of the North Dakota-jurisdictional portions of the projects from Minnesota ratepayers.

- 3) **Xcel's burden and failure to demonstrate Aurora costs and benefits.** Department argued that this claim by Aurora is not a claim of a failure on the part of the Commission, but rather on the part of Xcel. The Department objected to and responded to Aurora's claim that the Department did not engage in discovery.

VI. Staff Analysis

The question for the Commission is whether it believes there is sufficient reason to grant a rehearing of its April 13, 2016 Order, and if so whether, upon rehearing, the Commission finds its decision either unlawful or unreasonable.

Staff agrees with the Department that the arguments advanced by Aurora have not raised any new issues or legal arguments requiring further consideration. If the Commission wishes to provide clarity to parties, it could do so, but staff does not believe that the Commission has acted either unlawfully or unreasonably.

- 1) **Use of "with prejudice."** The Commission denied with prejudice Xcel's request to recover a portion of the North Dakota-jurisdictional costs of the Aurora PPA from Minnesota ratepayers under Minn. Stat. § 216B.1645⁴ in part because the Commission found the request was a deviation from standard jurisdictional-cost-allocation practice and there was no basis to approve the request.

As outlined in the Order, regardless of any new data Xcel could provide on the ratepayer impacts of its North Dakota-related cost recovery proposal, the conceptual framework of Xcel's proposal was rejected by the Commission, the framework being that Xcel's Minnesota ratepayers would subsidize North Dakota ratepayers' consumption of solar energy.

Staff is not aware at this time what jurisdictional-cost-allocation solutions, if any, Xcel may identify in its compliance filing, but to the degree such solutions call for Minnesota ratepayers to subsidize North Dakota ratepayers' consumption of solar energy, it is staff's understanding that the Commission will reject them as violating its April 16, 2013 Order. In the event it did not intend or now wishes to avoid this result, the Commission can revise its Order pursuant to Minn. Stat. § 216B.25, which authorizes the Commission to open and rescind, alter or amend any prior order on its own motion or the motion of an interested party.

⁴ Minn. Stat. 216B.1645 is the renewable energy standard (RES/SES) contract and investment statute, which allows for recovery of those contracts or investments on an accelerated basis through a rider.

- 2) **Equal treatment of similarly-situated developers.** Staff agrees with the Department and its analysis (not repeated here) of the status of similarly-situated developers; that the Commission has not treated any developer or project differently in regard to cost recovery. While Xcel may be pursuing different regulatory strategies with different developers, it is staff's understanding it is doing so in each instance under contractual provisions agreed to by Xcel and the developer.
- 3) **Xcel's burden and failure to demonstrate Aurora costs and benefits.** Again, staff agrees with the Department; this claim is not about a failure on the part of the Commission but rather on the part of Xcel, as well as Aurora. Xcel's ND Cost Petition was based on the terms of the Aurora PPA and the Letter Agreement executed by Xcel and Aurora. Staff does not believe there is anything the Commission need do to protect these parties from the results of their negotiations.

VII. Previous Commission Action

This matter was heard on March 10, 2016, with Chair Heydinger and Commissioners Lange, Schuerger, and Tuma present. The Commission vote on this matter was 3-1, with Commissioner Tuma voting against the motion.

VIII. Commission Decision Alternatives

- A. Grant the request for reconsideration:
 1. Vacate the Commission's April 13, 2016, Order.
 2. Reconsider the Commission's April 13, 2016 Order.
- B. Deny the request for reconsideration.
- C. Take some other action.

Staff recommends decision alternative B.