

February 8, 2018

Mr. Daniel P. Wolf  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place E.  
Suite 350  
St. Paul, MN 55101

**Re: In the Matter of Petitions to Terminate the Power Purchase Agreements with Benson Power and Laurentian Energy Authority.**

Docket No. E-002/M-17-530 & Docket No. E-002/M-17-551

Dear Mr. Wolf,

The Associated Contract Loggers & Truckers of Minnesota (ACLT) are Intervenors in the above referenced Dockets and respectfully submit this Petition for Reconsideration by the Minnesota Public Utilities Commission in regards to the Order issued on January 23, 2018 in the matter of the Xcel Energy Petitions to Terminate the Power Purchase Agreements, Acquire the Benson Power facility, and demolish the Benson Power facility as represented in Docket No.'s E-002/M-17-530 and E-002/M-17-551.

The ACLT submitted filings on the Benson Power PPA Termination Petition and the Laurentian Energy PPA Termination Petition submitted by Xcel Energy. We request that these submissions and attachments be included by this reference.

**The Commission Erred in Not Requiring an Environmental Assessment Worksheet and/or an Environmental Impact Statement as per the Minnesota Environmental Policy Act**

**The foundation and basis for the Minnesota Environmental Policy Act as per Minnesota Statutes is;**

**116D.01 PURPOSE.**

The purposes of Laws 1973, chapter 412, are: (a) to declare a state policy that will encourage productive and enjoyable harmony between human beings and their environment; (b) to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of human beings; and (c) to enrich the understanding of the ecological systems and natural resources important to the state and to the nation.

**The State of Minnesota accomplishes this objective by the following declaration;**

**116D.02 DECLARATION OF STATE ENVIRONMENTAL POLICY.**

**Subdivision 1. Policy.**

The legislature, recognizing the profound impact of human activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high density urbanization, industrial expansion, resources exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of human beings, declares that it is the continuing policy of the state government, in cooperation with federal and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which human beings and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of the state's people.

**Subd. 2. State responsibilities.**

In order to carry out the policy set forth in Laws 1973, chapter 412, it is the continuing responsibility of the state government to use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate state plans, functions, programs and resources to the end that the state may:

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all people of the state safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(3) discourage ecologically unsound aspects of population, economic and technological growth, and develop and implement a policy such that growth occurs only in an environmentally acceptable manner;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever practicable, an environment that supports diversity, and variety of individual choice;

(5) encourage, through education, a better understanding of natural resources management principles that will develop attitudes and styles of living that minimize environmental degradation;

(6) develop and implement land use and environmental policies, plans, and standards for the state as a whole and for major regions thereof through a coordinated program of planning and land use control;



- (7) define, designate, and protect environmentally sensitive areas;
- (8) establish and maintain statewide environmental information systems sufficient to gauge environmental conditions;
- (9) practice thrift in the use of energy and maximize the use of energy efficient systems for the utilization of energy, and minimize the environmental impact from energy production and use;
- (10) preserve important existing natural habitats of rare and endangered species of plants, wildlife, and fish, and provide for the wise use of our remaining areas of natural habitation, including necessary protective measures where appropriate;
- (11) reduce wasteful practices which generate solid wastes;
- (12) minimize wasteful and unnecessary depletion of nonrenewable resources;
- (13) conserve natural resources and minimize environmental impact by encouraging extension of product lifetime, by reducing the number of unnecessary and wasteful materials practices, and by recycling materials to conserve both materials and energy;
- (14) improve management of renewable resources in a manner compatible with environmental protection;
- (15) provide for reclamation of mined lands and assure that any mining is accomplished in a manner compatible with environmental protection;
- (16) reduce the deleterious impact on air and water quality from all sources, including the deleterious environmental impact due to operation of vehicles with internal combustion engines in urbanized areas;
- (17) minimize noise, particularly in urban areas;
- (18) prohibit, where appropriate, floodplain development in urban and rural areas; and
- (19) encourage advanced waste treatment in abating water pollution.

**The State of Minnesota directs State Agencies (of which the Minnesota Public Utilities is one) to the fullest extent practicable to interpret and administer these rules, policies and public laws in accordance with the following;**

#### **116D.03 ACTION BY STATE AGENCIES.**

##### **Subdivision 1. Requirement.**

The legislature authorizes and directs that, to the fullest extent practicable the policies, rules and public laws of the state shall be interpreted and administered in accordance with the policies set forth in sections 116D.01 to 116D.06.

**Subd. 2.Duties.**

All departments and agencies of the state government shall:

- (1) on a continuous basis, seek to strengthen relationships between state, regional, local and federal-state environmental planning, development and management programs;
- (2) utilize a systematic, interdisciplinary approach that will insure the integrated use of the natural and social sciences and the environmental arts in planning and in decision making which may have an impact on the environment; as an aid in accomplishing this purpose there shall be established advisory councils or other forums for consultation with persons in appropriate fields of specialization so as to ensure that the latest and most authoritative findings will be considered in administrative and regulatory decision making as quickly and as amply as possible;
- (3) identify and develop methods and procedures that will ensure that environmental amenities and values, whether quantified or not, will be given at least equal consideration in decision making along with economic and technical considerations;
- (4) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;
- (5) recognize the worldwide and long range character of environmental problems and, where consistent with the policy of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize interstate, national and international cooperation in anticipating and preventing a decline in the quality of the world environment;
- (6) make available to the federal government, counties, municipalities, institutions and individuals, information useful in restoring, maintaining, and enhancing the quality of the environment, and in meeting the policies of the state as set forth in Laws 1973, chapter 412;
- (7) initiate the gathering and utilization of ecological information in the planning and development of resource oriented projects; and
- (8) undertake, contract for or fund such research as is needed in order to determine and clarify effects by known or suspected pollutants which may be detrimental to human health or to the environment, as well as to evaluate the feasibility, safety and environmental effects of various methods of dealing with pollutants.

**The Statutory Requirement for an Environmental Assessment Worksheet or Environment Impact Statement for a "Project" is outlined in the following:**

**116D.04 ENVIRONMENTAL IMPACT STATEMENTS.**

**Subd. 1a.Definitions.**



For the purposes of this chapter, the following terms have the meanings given to them in this subdivision.

(a) "Natural resources" has the meaning given it in section 116B.02, subdivision 4.

(b) "Pollution, impairment or destruction" has the meaning given it in section 116B.02, subdivision 5.

(c) "Environmental assessment worksheet" means a brief document which is designed to set out the basic facts necessary to determine whether an environmental impact statement is required for a proposed action.

(d) "Governmental action" means activities, including projects wholly or partially conducted, permitted, assisted, financed, regulated, or approved by units of government including the federal government.

(e) "Governmental unit" means any state agency and any general or special purpose unit of government in the state including, but not limited to, watershed districts organized under chapter 103D, counties, towns, cities, port authorities, housing authorities, and economic development authorities established under sections 469.090 to 469.108, but not including courts, school districts, the Department of Iron Range Resources and Rehabilitation, and regional development commissions other than the Metropolitan Council.

**Subd. 2a. When prepared.**

(a) Where there is potential for significant environmental effects resulting from any major governmental action, the action shall be preceded by a detailed environmental impact statement prepared by the responsible governmental unit. The environmental impact statement shall be an analytical rather than an encyclopedic document which describes the proposed action in detail, analyzes its significant environmental impacts, discusses appropriate alternatives to the proposed action and their impacts, and explores methods by which adverse environmental impacts of an action could be mitigated. The environmental impact statement shall also analyze those economic, employment, and sociological effects that cannot be avoided should the action be implemented. To ensure its use in the decision-making process, the environmental impact statement shall be prepared as early as practical in the formulation of an action.

(b) The board shall by rule establish categories of actions for which environmental impact statements and for which environmental assessment worksheets shall be prepared as well as categories of actions for which no environmental review is required under this section. A mandatory environmental assessment worksheet is not required for the expansion of an ethanol plant, as defined in section 41A.09, subdivision 2a, paragraph (b), or the conversion of an ethanol plant to a biobutanol facility or the expansion of a biobutanol facility as defined in section 41A.15, subdivision 2d, based on the capacity of the expanded or converted facility to produce alcohol fuel, but must be required if the ethanol plant or biobutanol facility meets or exceeds thresholds of other categories of actions for which

environmental assessment worksheets must be prepared. The responsible governmental unit for an ethanol plant or biobutanol facility project for which an environmental assessment worksheet is prepared is the state agency with the greatest responsibility for supervising or approving the project as a whole.

(c) A mandatory environmental impact statement is not required for a facility or plant located outside the seven-county metropolitan area that produces less than 125,000,000 gallons of ethanol, biobutanol, or cellulosic biofuel annually, or produces less than 400,000 tons of chemicals annually, if the facility or plant is: an ethanol plant, as defined in section 41A.09, subdivision 2a, paragraph (b); a biobutanol facility, as defined in section 41A.15, subdivision 2d; or a cellulosic biofuel facility. A facility or plant that only uses a cellulosic feedstock to produce chemical products for use by another facility as a feedstock is not considered a fuel conversion facility as used in rules adopted under this chapter.

(d) The responsible governmental unit shall promptly publish notice of the completion of an environmental assessment worksheet by publishing the notice in at least one newspaper of general circulation in the geographic area where the project is proposed, by posting the notice on a Web site that has been designated as the official publication site for publication of proceedings, public notices, and summaries of a political subdivision in which the project is proposed, or in any other manner determined by the board and shall provide copies of the environmental assessment worksheet to the board and its member agencies. Comments on the need for an environmental impact statement may be submitted to the responsible governmental unit during a 30-day period following publication of the notice that an environmental assessment worksheet has been completed. The responsible governmental unit's decision on the need for an environmental impact statement shall be based on the environmental assessment worksheet and the comments received during the comment period, and shall be made within 15 days after the close of the comment period. The board's chair may extend the 15-day period by not more than 15 additional days upon the request of the responsible governmental unit.

(e) An environmental assessment worksheet shall also be prepared for a proposed action whenever material evidence accompanying a petition by not less than 100 individuals who reside or own property in the state, submitted before the proposed project has received final approval by the appropriate governmental units, demonstrates that, because of the nature or location of a proposed action, there may be potential for significant environmental effects. Petitions requesting the preparation of an environmental assessment worksheet shall be submitted to the board. The chair of the board shall determine the appropriate responsible governmental unit and forward the petition to it. A decision on the need for an environmental assessment worksheet shall be made by the responsible governmental unit within 15 days after the petition is received by the responsible governmental unit. The board's chair may extend the 15-day period by not more than 15 additional days upon request of the responsible governmental unit.



(f) Except in an environmentally sensitive location where Minnesota Rules, part 4410.4300, subpart 29, item B, applies, the proposed action is exempt from environmental review under this chapter and rules of the board, if:

(1) the proposed action is:

(i) an animal feedlot facility with a capacity of less than 1,000 animal units; or

(ii) an expansion of an existing animal feedlot facility with a total cumulative capacity of less than 1,000 animal units;

(2) the application for the animal feedlot facility includes a written commitment by the proposer to design, construct, and operate the facility in full compliance with Pollution Control Agency feedlot rules; and

(3) the county board holds a public meeting for citizen input at least ten business days before the Pollution Control Agency or county issuing a feedlot permit for the animal feedlot facility unless another public meeting for citizen input has been held with regard to the feedlot facility to be permitted. The exemption in this paragraph is in addition to other exemptions provided under other law and rules of the board.

(g) The board may, before final approval of a proposed project, require preparation of an environmental assessment worksheet by a responsible governmental unit selected by the board for any action where environmental review under this section has not been specifically provided for by rule or otherwise initiated.

(h) An early and open process shall be utilized to limit the scope of the environmental impact statement to a discussion of those impacts that, because of the nature or location of the project, have the potential for significant environmental effects. The same process shall be utilized to determine the form, content, and level of detail of the statement as well as the alternatives that are appropriate for consideration in the statement. In addition, the permits that will be required for the proposed action shall be identified during the scoping process. Further, the process shall identify those permits for which information will be developed concurrently with the environmental impact statement. The board shall provide in its rules for the expeditious completion of the scoping process. The determinations reached in the process shall be incorporated into the order requiring the preparation of an environmental impact statement.

(i) The responsible governmental unit shall, to the extent practicable, avoid duplication and ensure coordination between state and federal environmental review and between environmental review and environmental permitting. Whenever practical, information needed by a governmental unit for making final decisions on permits or other actions required for a proposed project shall be developed in conjunction with the preparation of an environmental impact statement. When an environmental impact statement is prepared for a project requiring multiple permits for which two or more agencies' decision processes include either mandatory or discretionary hearings before a hearing officer before the agencies' decision on the permit, the agencies may, notwithstanding any law or rule to the contrary, conduct the hearings in a single consolidated hearing process if requested by the



proposer. All agencies having jurisdiction over a permit that is included in the consolidated hearing shall participate. The responsible governmental unit shall establish appropriate procedures for the consolidated hearing process, including procedures to ensure that the consolidated hearing process is consistent with the applicable requirements for each permit regarding the rights and duties of parties to the hearing, and shall utilize the earliest applicable hearing procedure to initiate the hearing. All agencies having jurisdiction over a permit identified in the draft environmental assessment worksheet scoping document must begin reviewing any permit application upon publication of the notice of preparation of the environmental impact statement.

(j) An environmental impact statement shall be prepared and its adequacy determined within 280 days after notice of its preparation unless the time is extended by consent of the parties or by the governor for good cause. The responsible governmental unit shall determine the adequacy of an environmental impact statement, unless within 60 days after notice is published that an environmental impact statement will be prepared, the board chooses to determine the adequacy of an environmental impact statement. If an environmental impact statement is found to be inadequate, the responsible governmental unit shall have 60 days to prepare an adequate environmental impact statement.

(k) The proposer of a specific action may include in the information submitted to the responsible governmental unit a preliminary draft environmental impact statement under this section on that action for review, modification, and determination of completeness and adequacy by the responsible governmental unit. A preliminary draft environmental impact statement prepared by the project proposer and submitted to the responsible governmental unit shall identify or include as an appendix all studies and other sources of information used to substantiate the analysis contained in the preliminary draft environmental impact statement. The responsible governmental unit shall require additional studies, if needed, and obtain from the project proposer all additional studies and information necessary for the responsible governmental unit to perform its responsibility to review, modify, and determine the completeness and adequacy of the environmental impact statement.

#### **Subd. 2b. Project prerequisites.**

If an environmental assessment worksheet or an environmental impact statement is required for a governmental action under subdivision 2a, a project may not be started and a final governmental decision may not be made to grant a permit, approve a project, or begin a project, until:

- (1) a petition for an environmental assessment worksheet is dismissed;
- (2) a negative declaration has been issued on the need for an environmental impact statement;
- (3) the environmental impact statement has been determined adequate; or
- (4) a variance has been granted from making an environmental impact statement by the environmental quality board.



**Subd. 3a.Final decisions.**

Within 30 days after final approval of an environmental impact statement, final decisions shall be made by the appropriate governmental units on those permits which were identified as required and for which information was developed concurrently with the preparation of the environmental impact statement. Provided, however, that the 30-day period may be extended where a longer period is permitted by section 15.99 or required by federal law or state statute or is consented to by the permit applicant. The permit decision shall include the reasons for the decision, including any conditions under which the permit is issued, together with a final order granting or denying the permit.

**Subd. 4a.Alternative review.**

The board shall by rule identify alternative forms of environmental review which will address the same issues and utilize similar procedures as an environmental impact statement in a more timely or more efficient manner to be utilized in lieu of an environmental impact statement.

**Subd. 5a.Rules.**

The board shall, by January 1, 1981, promulgate rules in conformity with this chapter and the provisions of chapter 15, establishing:

- (1) the governmental unit which shall be responsible for environmental review of a proposed action;
- (2) the form and content of environmental assessment worksheets;
- (3) a scoping process in conformance with subdivision 2a, clause (e);
- (4) a procedure for identifying during the scoping process the permits necessary for a proposed action and a process for coordinating review of appropriate permits with the preparation of the environmental impact statement;
- (5) a standard format for environmental impact statements;
- (6) standards for determining the alternatives to be discussed in an environmental impact statement;
- (7) alternative forms of environmental review which are acceptable pursuant to subdivision 4a;
- (8) a model ordinance which may be adopted and implemented by local governmental units in lieu of the environmental impact statement process required by this section, providing for an alternative form of environmental review where an action does not require a state agency permit and is consistent with an applicable comprehensive plan. The model ordinance shall provide for adequate consideration of appropriate alternatives, and shall

ensure that decisions are made in accordance with the policies and purposes of Laws 1980, chapter 447;

(9) procedures to reduce paperwork and delay through intergovernmental cooperation and the elimination of unnecessary duplication of environmental reviews;

(10) procedures for expediting the selection of consultants by the governmental unit responsible for the preparation of an environmental impact statement; and

(11) any additional rules which are reasonably necessary to carry out the requirements of this section.

**Subd. 5b. Review of environmental assessment worksheets and environmental impact statements.**

By December 1, 2018, and every three years thereafter, the Environmental Quality Board, Pollution Control Agency, Department of Natural Resources, and Department of Transportation, after consultation with political subdivisions, shall submit to the governor and the chairs of the house of representatives and senate committees having jurisdiction over environment and natural resources a list of mandatory environmental assessment worksheet and mandatory environmental impact statement categories for which the agency or a political subdivision is designated as the responsible government unit, and for each worksheet or statement category, a document including:

(1) intended historical purposes of the category;

(2) whether projects that fall within the category are also subject to local, state, or federal permits; and

(3) an analysis of and recommendations for whether the mandatory category should be modified, eliminated, or unchanged based on its intended outcomes and relationship to existing permits or other federal, state, or local laws or ordinances.

**Subd. 6. Prohibitions.**

No state action significantly affecting the quality of the environment shall be allowed, nor shall any permit for natural resources management and development be granted, where such action or permit has caused or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state, so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction. Economic considerations alone shall not justify such conduct.

**Subd. 6a. Comments.**

Prior to the preparation of a final environmental impact statement, the governmental unit responsible for the statement shall consult with and request the comments of every



governmental office which has jurisdiction by law or special expertise with respect to any environmental effect involved. Copies of the drafts of such statements and the comments and views of the appropriate offices shall be made available to the public. The final detailed environmental impact statement and the comments received thereon shall precede final decisions on the proposed action and shall accompany the proposal through an administrative review process.

**Subd. 7.Required consideration.**

Regardless of whether a detailed written environmental impact statement is required by the board to accompany an application for a permit for natural resources management and development, or a recommendation, project, or program for action, officials responsible for issuance of aforementioned permits or for other activities described herein shall give due consideration to the provisions of Laws 1973, chapter 412, as set forth in section 116D.03, in the execution of their duties.

**Subd. 8.Early notice.**

In order to facilitate coordination of environmental decision making and the timely review of agency decisions, the board shall establish by rule a procedure for early notice to the board and the public of natural resource management and development permit applications and other impending state actions having significant environmental effects.

**Subd. 9.Modification before final decision.**

Prior to the final decision upon any state project or action significantly affecting the environment or for which an environmental impact statement is required, or within ten days thereafter, the board may delay implementation of the action or project by notice to the agency or department and to interested parties. Thereafter, within 45 days of such notice, the board may reverse or modify the decisions or proposal where it finds, upon notice and hearing, that the action or project is inconsistent with the policy and standards of sections 116D.01 to 116D.06. Any aggrieved party may seek judicial review pursuant to chapter 14.

**Subd. 10.Review.**

A person aggrieved by a final decision on the need for an environmental assessment worksheet, the need for an environmental impact statement, or the adequacy of an environmental impact statement is entitled to judicial review of the decision under sections 14.63 to 14.68. A petition for a writ of certiorari by an aggrieved person for judicial review under sections 14.63 to 14.68 must be filed with the Court of Appeals and served on the responsible governmental unit not more than 30 days after the responsible governmental unit provides notice of the final decision in the EQB Monitor. Proceedings for review under this section must be instituted by serving a petition for a writ of certiorari personally or by certified mail upon the responsible governmental unit and by promptly filing the proof of service in the Office of the Clerk of the Appellate Courts and the matter will proceed in the

manner provided by the Rules of Civil Appellate Procedure. A copy of the petition must be provided to the attorney general at the time of service. Copies of the writ must be served, personally or by certified mail, upon the responsible governmental unit and the project proposer. The filing of the writ of certiorari does not stay the enforcement of any other governmental action, provided that the responsible governmental unit may stay enforcement or the Court of Appeals may order a stay upon terms it deems proper. A bond may be required under section 562.02 unless at the time of hearing on the application for the bond the petitioner-relator has shown that the claim is likely to succeed on the merits. The board may initiate judicial review of decisions referred to herein and the board or a project proposer may intervene as of right in any proceeding brought under this subdivision.

**Subd. 11.Failure to act.**

If the board or governmental unit which is required to act within a time period specified in this section fails to so act, any person may seek an order of the district court requiring the board or governmental unit to immediately take the action mandated by subdivisions 2a and 3a.

**Subd. 12.Impact analysis; large electric power facilities.**

No attempt need be made to tabulate, analyze or otherwise evaluate the potential impact of elections made pursuant to section 216E.12, subdivision 4, in environmental impact statements done for large electric power facilities. It is sufficient for purposes of this chapter that such statements note the existence of section 216E.12, subdivision 4.

**Subd. 13.Enforcement.**

This section may be enforced by injunction, action to compel performance, or other appropriate action in the district court of the county where the violation takes place. Upon the request of the board or the chair of the board, the attorney general may bring an action under this subdivision.

**Subd. 14.Customized environmental assessment worksheet forms; electronic submission.**

(a) The commissioners of natural resources and the Pollution Control Agency and the board shall periodically review mandatory environmental assessment worksheet categories under rules adopted under this section, and other project types that are frequently subject to environmental review, and develop customized environmental assessment worksheet forms for the category or project type. The forms must include specific questions that focus on key environmental issues for the category or project type. In assessing categories and project types and developing forms, the board shall seek the input of governmental units that are frequently responsible for the preparation of a worksheet for the particular category or project type. The commissioners and the board shall also seek input from the general public



on the development of customized forms. The commissioners and board shall make the customized forms available online.

(b) The commissioners of natural resources and the Pollution Control Agency shall allow for the electronic submission of environmental assessment worksheets and permits.

**Subd. 15. Duplicative permit information; environmental assessment worksheets.**

To the extent practicable and so as not to conflict with other requirements of this section, the board shall not require, unless necessary, information in an environmental assessment worksheet for a proposed action when the information is also required as part of any necessary permitting process for the proposed action.

**Subd. 16. Groundwater; environmental assessment worksheets.**

When an environmental assessment worksheet is required for a proposed action that has the potential to require a groundwater appropriation permit from the commissioner of natural resources, the board shall require that the environmental assessment worksheet include an assessment of the water resources available for appropriation.

**Subd. 17. Discretionary review notification.**

The commissioners of natural resources and the Pollution Control Agency, when ordering the preparation of a discretionary environmental impact statement or discretionary environmental assessment worksheet for a proposed action, must notify the proposer of the action by certified mail at least 14 calendar days prior to making the order.

Xcel Energy argued that the action of terminating the PPA's and demolishing the Benson Power facility was not subject to MEPA requirements and an EAW or EIS because the action was a "transaction" and not a "project". In fact, at the recorded 4:31:00 mark Commissioner Lipschultz states that MEPA requirements under EQB rules would apply to a "project". Xcel responded that this is a "transaction" and is therefore a definitional problem.

However, on numerous occasions, besides the above referenced "project" statement from Commissioner Lipschultz, during the Hearing multiple participants referred to the action as a "project".

- At the recorded Hearing video mark of 36:30 LEA Attorney Mr. Paulson referred to the Benson "Project".
- At the recorded Hearing video mark of 4:33:03 Xcel representative stated "RDF statute specifically says that for both of these "projects" if the Commission approves the termination.....".
- At the recorded Hearing video mark of 4:54:00 Department of Commerce representative Dr. Rekow stated "When a company builds a "project" they have all of the capital costs ....., this is the same thing only in reverse"

Clearly these Petitions to terminate the PPA's do in fact meet the "project" definition as confirmed during testimony from the Department of Commerce, Xcel Energy, LEA attorney, and the PUC. The attempt by Xcel Energy to argue semantics is disingenuous and denies Minnesota the ability to ensure environmental considerations that have been applied and required of similar projects. The "project" is not solely the demolition of the Benson Power facility, the project as referenced above is the termination of the PPA's, the loss of the biomass industry and markets, the loss of feedlot manure management options, and the negative impact on the natural resources of the State of Minnesota.

MEPA requires the MNPUC to consider environmental impacts of projects that may prove to adversely impact Minnesota environment and natural resources. The permissive legislative language that allowed for Xcel Energy to Petition the PUC for PPA Termination does not restrict or negate existing environmental statutes.

Therefore, the MNPUC, as per prior precedent and MEPA requirements, should have ordered an EAW and/or EIS prior to issuing a decision on the above referenced Petitions. The MNPUC's refusal to exercise the broad discretionary authority regarding MEPA and other factors denies Minnesota full consideration and due process as required in providing consistent rulings.

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "Scott Dane", with a horizontal line extending to the right.

Scott Dane

Executive Director

Associated Contract Loggers & Truckers of Minnesota