

February 22, 2018

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

RE: Answer to Request for Reconsideration
Docket No. E002/M-17-551

Dear Mr. Wolf:

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

Minnesota Timber Producers Association's Motion for Reconsideration.

Associated Contract Loggers & Truckers of Minnesota's Petition for Reconsideration.

The Petitions were filed on February 6, 2018 and February 8, 2018 by:

Wayne E. Brandt	Scott Dane
Executive Vice President	Executive Director
Minnesota Timber Producers Assn.	Associated Contract Loggers & Truckers of Minn.
903 Medical Arts Building	3961 Barker Rd. South
324 W. Superior St.	Gilbert, MN 55741
Duluth, MN 55802	

The Department recommends that the Minnesota Public Utilities Commission **not reconsider its order** and is available to answer any questions the Commission may have.

Sincerely,

/s/ STEVE RAKOW
Analyst Coordinator

SR/lt
Attachment



Before the Minnesota Public Utilities Commission

Comments of the Minnesota Department of Commerce Division of Energy Resources

Docket No. E002/M-17-551

I. INTRODUCTION

On July 14, 2017, Northern States Power Company, doing business as Xcel Energy (Xcel or the Company) filed the Company's *Petition for Approval to Terminate the Laurentian PPA* pursuant to Minnesota Statutes §§ 216B.1645 and 216B.2424 along with Minnesota Rules 7829.3200 and 7829.1300. Xcel sought Minnesota Public Utilities Commission (Commission) approval of the *Termination Agreement* and the *Grant Contract* (collectively, Agreements) between Xcel and Laurentian Energy Authority I, LLC (LEA).

On August 14, 2017 the Minnesota Department of Commerce, Division of Energy Resources (Department) filed comments.

On August 18, 2017, the Commission issued its *Notice of Comment Period* establishing due dates of September 8, 2017 and September 18, 2017 for comments and responses.

On September 6, 2017, comments were filed by the Minnesota Department of Natural Resources.

On September 8, 2017, comments were filed by LEA.

On September 13, 2017:

- The Minnesota Timber Producers Association (MTPA) filed a petition to intervene;
- MTPA made late-filed comments; and
- The U. S. Department of Agriculture, U.S. Forest Service, Superior National Forest made late-filed comments.

On September 14, 2017, late-filed comments were filed by Associated Contract Loggers & Truckers of Minnesota (ACLT).

On September 18, 2017, reply comments were filed by:

- Xcel;
- the Department; and
- Alan Muller.

On October 24, 2017, Xcel filed a response to the reply comments.

On January 18, 2018, the Chair of the St. Louis County Board of Commissioners filed comments.

On January 23, 2018 the Commission issued its *Order Approving Petitions, Approving Cost Recovery Proposals, and Granting Variances* (Order) in Docket Nos. E002/M-17-530 and E002/M-17-551.

On February 6, 2018, MTPA filed MTPA's *Petition for Reconsideration* (MTPA Petition) in Docket Nos. E002/M-17-530 and E002/M-17-551.

On February 8, 2018, ACLT filed ACLT's *Petition for Reconsideration* (ACLT Petition) in Docket Nos. E002/M-17-530 and E002/M-17-551.

On February 13, 2018, the Commission issued its *Notice Setting Common Due Date for Answers to Petitions For Rehearing and Reconsideration*, establishing February 22, 2018 as the deadline for filing answers to all petitions for rehearing.

Below is the Department's answer to the MTPA Petition and to the ACLT Petition.

II. DEPARTMENT ANALYSIS

A. RULE BACKGROUND

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.

The Commission's standard for reconsideration is explained in the Commission's May 6, 2009 *Order Denying Reconsideration* in Docket No. E017, ET6131, ET6130, ET6144, ET6135, ET10/CN-05-619:

The Commission finds that the petitions do not raise new issues, do not point to new and relevant evidence, do not expose errors or ambiguities in the original Order, and do not otherwise persuade the Commission that it should rethink its original decision. The Commission concludes that the original decisions are the ones most consistent with the facts, the law, and the public interest, and will therefore deny the petitions for reconsideration.

Thus, the Commission has ruled generally that a petition for reconsideration must:

- raise new issues;
- point to new and relevant evidence; and/or
- expose errors or ambiguities in the original order.

In order for a request for reconsideration to be granted, the result of the new issues, new evidence, or errors must be that the Commission is persuaded that it should rethink its original decision and that a new decision is more consistent with the facts and the law. The Department reviewed the MTPA Petition and the ACLT Petition to determine if they raised significant new issues, pointed to new and relevant evidence, or exposed errors in the Order.

B. MTPA PETITION

1. Public Interest and Rule Variances

The MTPA Petition argues that the Commission erred in not considering the public interest when it decided to approve Xcel's request for a variance to Minnesota Rules, part 7825.2600.¹ The MTPA Petition also argues "neither MN Rules 7829.0100 nor MN Statutes provide a definition of 'public interest' for this matter." The Department agrees with MTPA that neither Minnesota Rules 7829.0100, 7829.3200, nor Minnesota Statutes provide a definition of "public interest" in the context of rule variances. However, the Order specifically listed the criteria required to be considered for a rule variance (pursuant to Minnesota Rule 7829.3200), including the requirement that "granting the variance would not adversely affect the public interest." The Order then evaluated the public interest criterion and concluded that the public

¹ The Department notes that Xcel also requested a variance to Minnesota Rules 7825.2500, but the MTPA Petition does not reference that request.

interest test was met because “granting the variance is consistent with the best interest of Xcel’s ratepayers.”

First, the MTPA Petition lists evidence regarding whether the transaction is in the public interest from different perspectives. In many instances MTPA helpfully indicates where in the record the evidence already exists. Thus, MTPA’s evidence generally is not new. Second, the Commission determined, in this proceeding, to grant greater weight to ratepayer impacts than other considerations when determining the public interest. While parties may prefer a different interpretation, the MTPA Petition does not identify any errors, identify new issues, or provide new evidence regarding the Order’s interpretation of public interest.

In summary, the MTPA Petition is without merit on this issue.

2. Prairie Island Contract

The MTPA Petition argues that the Commission erred in allowing Xcel’s biomass capacity to fall below 75 MW. The MTPA Petition claims that this is a critical error because Minnesota Statutes § 116C.773 remains in force and requires “the governor, on behalf of the state, and the public utility operating the Prairie Island nuclear plant enter into an agreement binding the parties to the terms of sections 116C.771 and 116C.772 and the mandate for 200 megawatts of wind power and 75 megawatts of biomass required by December 31, 2002.”

This issue was thoroughly discussed in the record of the proceeding by the parties² and those discussions were considered by the Commission.³ The MTPA Petition does not identify any errors, identify new issues, or provide new evidence regarding the Order’s interpretation and actions regarding Minnesota Statutes § 116C.773.

In summary, the MTPA Petition is without merit on this issue.

B. ACLT Petition

The ACLT Petition argues that the Commission erred in not requiring environmental review. The ACLT Petition helpfully indicates where in the record, including during oral argument, the issues related to environmental review were discussed. Thus, the ACLT Petition does not raise new issues.

² For examples, see the comments of MTPA dated August 30, 2017, the comments of NAF and BCT dated September 1, 2017, and the reply comments of the Department and Xcel dated September 15, 2017.

³ The Commission’s Order contains several references to party positions on the relevance of Minnesota Statutes §116C.773

As noted during the proceeding, Minnesota Rules 4410.4600 subp. 1 states that “Projects within subparts 3 to 25 and 27 are exempt from parts 4410.0200 to 4410.6500...” As discussed during oral argument, Minnesota Rules 4410.4600 subp. 24 provides an exemption for financial transactions:

The following projects are exempt:

- A. Acquisition or disposition of private interests in real property, including leaseholds, easements, right-of-way, or fee interests, is exempt.
- B. Purchase of operating equipment, maintenance equipment, or operating supplies is exempt.

Xcel’s proposal involves a financial transaction and, to the extent the Commission is approving the financial transaction, is exempt.

In summary, the ACLT Petition is without merit on this issue.

III. DEPARTMENT RECOMMENDATION

The Department recommends that the Commission not reconsider the Order.

/lt

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-17-551

Dated this 22nd day of February 2018

/s/Sharon Ferguson

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