


## Staff Briefing Papers

Meeting Date	March 22, 2018	Agenda Item **2
Company	Northern States Power Company d/b/a Xcel Energy	
Docket No.	<b>E002/M-17-530 and E002/M-17-551</b>	
	<p><b>In the Matter of Petition of Approval to Terminate the Power Purchase Agreement (PPA) with Benson Power, LLC, Acquire the Benson/Fibrominn Plant, and Close the Facility</b></p> <p><b>In the Matter of Petition for Approval to Terminate the PPA with Laurentian Energy Authority I, LLC (LEA)</b></p>	
Issues	What action should the Commission take on the petitions for reconsideration?	
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 Relevant Documents	Date
<b>17-530, Benson</b>	
Commission Order	1/23/2018
Minnesota Timber Producers Association, Petition for Reconsideration (filed for both dockets)	2/6/2018
Associated Contract Loggers & Truckers of Minnesota, Petition for Reconsideration (filed for both dockets)	2/9/2018
Minnesota Turkey Growers Association, Petition for Reconsideration	2/9/2018

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.



**Relevant Documents**

**Date**

North American Fertilizer LLC and Beaver Creek Transport Inc., Petition for Reconsideration	2/9/2018
Benson Power Suppliers and Haulers, Petition for Reconsideration	2/12/2018
Xcel Energy, Comments (filed for both dockets)	2/22/2018
City of Benson, Comments	2/22/2018
Department of Commerce, Division of Energy Resources, Answer	2/22/2018
<b>17-551, Laurentian</b>	
Minnesota Timber Producers Association, Petition for Reconsideration (filed for both dockets)	2/6/2018
Associated Contract Loggers & Truckers of Minnesota, Petition for Reconsideration (filed for both dockets)	2/9/2018
Xcel Energy, Comments (filed for both dockets)	2/22/2018
Laurentian Energy Authority I, LLC, Comments	2/22/2018
Department of Commerce, Division of Energy Resources, Answer	2/22/2018

## Attached Documents

### Attachment A: Relevant Rules and Statutes

### Attachment B: Table Briefly Summarizing DOC Responses to Petitions

#### I. Statement of the Issues

What action should the Commission take on the petitions for reconsideration?

#### II. Minnesota Statutes and Commission Rules

Petitions for reconsideration are subject to Minn. Stat. § 216B.27 and Minn. Rules part 7829.3000.<sup>1</sup> Petitions for reconsideration are denied by operation of law unless the Commission takes action within sixty (60) days of the request.<sup>2</sup>

If the Commission takes no action on any petitions, the requests would be considered denied as of April 6, 2018.<sup>3</sup>

The Commission may also take specific action to deny the petition.

If the Commission takes up a party's request for reconsideration, the Commission may:

- (1) reconsider, and
  - (a) affirm,
  - (b) modify or
  - (c) reverse its initial decision, or
- (2) toll the time period to allow additional time for reconsideration, or
- (3) deny the petition for reconsideration and thereby affirm the initial decision.

The Commission may also reconsider its Order on its own motion.

In accordance with the Commission's adopted meeting procedures, only a Commissioner voting on the prevailing side may move to reconsider. If the motion to reconsider passes, then the matter is again before the Commission. The Commission voted 5-0, with Commissioners Lange, Lipschultz, Schuerger, Sieben, and Tuma present.

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<sup>1</sup> Attachment A provides the language of Minn. Stat. § 216B.27, and Minn. Rules part 7829.3000 in full.

<sup>2</sup> Please see [Minn. Stat. §216B.27](#), subd. 4.

<sup>3</sup> The petitions for reconsideration in these two dockets were not all filed on the same date. Staff has used the date the first reconsideration filing.

### III. Procedural Background

#### A. Benson

On June 30, 2017, Northern States Power Company, dba Xcel Energy (Xcel or the Company), filed a Petition for approval to terminate the Power Purchase Agreement (PPA) with Benson Power, LLC, acquire the Benson Power biomass plant (Benson plant or Fibrominn), and subsequently close the facility.

On January 23, 2018, following written comments and oral argument, the Commission issued its *Order Approving Petitions, Approving Cost Recovery Proposals, and Granting Variances*.

The Minnesota Timber Producers Association filed their Petition for Reconsideration on February 2, 2018 for both Benson and Laurentian dockets.

On February 6, 2018, Minnesota Timber Producers Association (TPA) filed their Petition for Reconsideration.

On February 9, 2018, Petition for Reconsiderations were filed by North American Fertilizer LLC and Beaver Creek Transport Inc., Minnesota Turkey Growers Association, and Associated Contract Loggers & Truckers of Minnesota.

Benson Power Suppliers and Haulers filed a Petition for Reconsideration on February 12, 2018.

On February 13, 2018, the Commission set a common deadline of February 22, 2018 to submit all comments and answers to the Petitions for Reconsideration.

Comments were supplied by Xcel and the City of Benson on February 22, 2018.

Also on February 22, 2018, the Department of Commerce, Division of Energy Resources filed their Answers in each docket.

#### B. Laurentian

On July 14, 2017, Xcel filed its Petition for Approval to Terminate the Laurentian PPA.

On January 23, 2018, following written comments and oral argument, the Commission issued its *Order Approving Petitions, Approving Cost Recovery Proposals, and Granting Variances*.

Two parties filed Petitions for Reconsideration for both dockets: Minnesota Timber Producers Association on filed their Petition on February 6, 2018 and the Associated Contract Loggers & Truckers of Minnesota's was filed on February 8, 2018.

Comments were supplied by Xcel and Laurentian Energy Authority I, LLC on February 22, 2018.

The Department of Commerce, Division of Energy Resources filed their Answers in each docket on February 22, 2018.

#### IV. Parties' Comments

##### 1. Minnesota Timber Producers Association

As interveners in both dockets, the Minnesota Timber Producers Association (TPA) filed their Petition for Reconsideration for the Benson and Laurentian Orders on February 6, 2018. TPA is a trade association whose members include loggers, truckers, small sawmills and allied businesses in Minnesota. Their members either directly or indirectly provide the vast majority of biomass to Benson Power LLC and Laurentian Energy. They were not in support of the Petitions and urged the Commission to deny the proposals. The concerns they provide in their Petition for Reconsideration are:

- TPA holds the Commission erred in not considering the public interest in the requests for rule variances.<sup>4</sup> While they note that both Minnesota Rules and Minnesota Statutes do not provide a definition of 'public interest', TPA would like the term applied more broadly. They maintained that the Department of Commerce regularly argues that socioeconomic and environmental interests should be considered in Commission matters.<sup>5</sup>

TPA filed initial comments on August 30, 2017 for the Benson docket and the same arguments appear again for Commission reconsideration as TPA examines the language provided in [Minn. Rules 7829.3200](#) (Other Variances).

1. Enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
2. Granting the variance would not adversely affect the public interest;
3. Granting the variance would not adversely affect the public interest;

TPA shares very similar responses from their initial comments with seven public interest impacts outlined: Xcel's ratepayer savings are far less than the economic impact and hardships that will be seen if the Benson Power Plant closes; the loggers who have supported Benson and LEA will be devastated; sawmills send their residuals to Benson and LEA, but they will have to find other, more costly means of disposing their biomass that may make sawmills unprofitable; the biomass markets provide critical revenue and a means to discard diseased wood that many groups rely on - family forest landowners, DNR, County Land Departments, Permanent School Trust Fund, U.S. Forest Service, and large forest landowners; disruption of harvesting techniques for pulpwood would lead to decreased supply and, ultimately, higher costs for paper and wood products, which jeopardizes mills; and, finally, TPA focuses on the public and communities who relied on the commitment made by Northern States Power (Xcel) to

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<sup>4</sup> Petition for Reconsideration by Minnesota Timber Producers Association (February 6, 2018) at page 1.

<sup>5</sup> *Id.*

develop renewable energy so it may store nuclear waste at its Prairie Island nuclear facility.<sup>6</sup>

- The second item, also discussed previously, is the contractual agreement between Northern States Power (Xcel) and the State of Minnesota found in [Minn. Stat. 116C.773](#) that TPA says “has not been amended or repealed since its enactment in 1994” and “[t]he requested actions in this Docket and in Docket no. E002/M-17-530 would be a breach of the contract and a violation of MS 116C.773.”<sup>7</sup> Further, TPA states that “[t]he Department of Commerce argues and the Commission adopts a view that the contract signed by the State of Minnesota does not apply in this matter due to various deficiencies. This argument is a folly as the production of high-cost biomass based electricity at the Benson and Laurentian facilities were repeatedly approved by the Commission.”<sup>8</sup>

## 2. Associated Contract Loggers & Truckers of Minnesota

Associated Contract Loggers & Truckers of Minnesota (ACLT) is a non-profit trade association representing all of the biomass producers and many transportation companies, and 200 timber industry companies, supplying Benson and LEA. They filed comments for both Petitions encouraging the Commission to deny Xcel’s Petitions and recently filed their Petitions for Reconsideration for both Benson and Laurentian dockets on February 9, 2018. Their reconsideration request is grounded under the Minnesota Environmental Protection Act (“MEPA”):

- The Commission erred in not requiring an environmental assessment worksheet (EAW) and/or an environmental impact statement (EIS).<sup>9</sup> ACLT reviewed MEPA’s purpose, how the state implements the policy, duties that state agencies must administer, and the statutory requirement of an EAW and EIS, and related exemptions and rules.<sup>10</sup> “The permissive legislative language that allowed for Xcel Energy to Petition the PUC for PPA Termination does not restrict or negate existing environmental statutes.”<sup>11</sup>
- ACLT disagrees with Xcel’s assessment that the termination of the PPAs and demolishing the buildings are not subject to an EAW or EIS.<sup>12</sup> They assert that throughout the hearing, there are several examples of parties – Xcel, Department of Commerce, Commissioners, LEA, and others – refer to the PPAs

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<sup>6</sup> Petition for Reconsideration by Minnesota Timber Producers Association (February 6, 2018) at pages 2-3.

<sup>7</sup> *Id.* at page 4.

<sup>8</sup> Petition for Reconsideration by Minnesota Timber Producers Association (February 6, 2018) at page 5.

<sup>9</sup> Petition for Reconsideration by Associated Contract Loggers & Truckers of Minnesota (February 9, 2018) at page 1.

<sup>10</sup> *Id.* at pages 2-13.

<sup>11</sup> *Id.* at page 13.

<sup>12</sup> *Id.*

as “projects”.<sup>13</sup> Therefore, ACLT determines that “[c]learly these Petitions to terminate the PPA’s do in fact meet the “project” definition as confirmed during testimony by DOC, Xcel, LEA attorney, and the PUC.”<sup>14</sup> Additionally, the “project” expands beyond the closure and demolition of the Benson facility. It includes “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.”<sup>15</sup>

### 3. Minnesota Turkey Growers Association

The Minnesota Turkey Growers Association (MTGA) is a service organization formed in 1939 representing approximately 450 turkey producers. The organization supplied comments for the Benson petition opposing the closure based on significant damages that will be felt by their members and other interests including poultry bedding, logging, fertilizer, and trucking firms.<sup>16</sup> On February 9<sup>th</sup>, 2018, the group filed a petition for reconsideration with their specific concerns and requests noted below.

- The Commission erred when it ignored the 1994 statutory requirement and accompanying the Contractual Agreement that allowed NSP (Xcel) to store dry casks of spent nuclear fuel and, in exchange, agreed to purchase biomass and wind power.<sup>17</sup> As the agreement was codified in Minn. Laws 1994, Chapter 641, MTGA asserts “[t]he statute and Contract were designed to prevent future legislatures from undoing the 1994 agreement and the commitments made by NSP.”<sup>18</sup> MTGA members have relied on this agreement for many years as a means to guarantee the disposal of turkey litter and the Benson facility is now an essential, year-round disposal location that, if closed, will create difficulties related to disposal.<sup>19</sup>
- MTGA requested to amend number 10<sup>20</sup> of the [January 23, 2018 Order](#) whereby the effective date would be three years from the original date of the order, so number 10 would be modified to the following: “This Order shall become effective on January 23, 2021.”<sup>21</sup>

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Minnesota Turkey Growers Association, Comments for Benson (August 31, 2017) at page 1.

<sup>17</sup> Petition for Reconsideration by Minnesota Turkey Growers Association (MTGA) (February 9, 2018) at page 1.

<sup>18</sup> *Id.* at pages 1-2.

<sup>19</sup> *Id.* at page 2.

<sup>20</sup> ORDER APPROVING PETITIONS, APPROVING COST RECOVERY PROPOSALS, AND GRANTING VARIANCES at page 24 (January 23, 2018).

<sup>21</sup> Petition for Reconsideration by Minnesota Turkey Growers Association (MTGA) (February 9, 2018) at page 2.

MTGA asserted that “[a] three-year period is necessary because our members are required by Minnesota Pollution Control Agency rules to land apply manure at agronomic rates” and their members “cannot simply spread the poultry litter anywhere; they need to find fields that can accept the nutrients and phase-in a land application program over a period of years.”<sup>22</sup> The group reminded the Commission that there is no statute prohibiting the Commission from adopting a delayed effective date, which would satisfy many of MTGA’s and the concerns of other parties.<sup>23</sup> “Immediate closure of the Benson plant would place a substantial burden on our members who deliver litter to the plant for what can only be described as a very nominal benefit to individual Xcel ratepayers.”<sup>24</sup>

#### 4. North American Fertilizer, LLC and Beaver Creek Transport, Inc.

North American Fertilizer, LLC (NAF) is a limited liability company with its main office in Olivia, Minnesota that receives ash from the Benson Plant and manufactures a fertilizer product sold at wholesale to retail fertilizer distributors across Minnesota, North Dakota, South Dakota, and Iowa.<sup>25</sup>

Beaver Creek Transport, Inc. (Beaver Creek) “delivers poultry litter to the Facility and manages the wood yard to ensure that fuel is available 24 hours a day, seven days a week, 365 days per year so that the Facility never runs out of biomass fuel.”<sup>26</sup> Both groups filed comments that were not in support of Xcel’s Benson Petition. Their Petition for Reconsideration was filed on February 9, 2018. Their concerns were primarily driven by considerations under MEPA.

- NAF and Beaver Creek declare that the Commission’s decision was affected by legal errors regarding MEPA, resulting from erroneous arguments presented by Xcel during the hearing.<sup>27</sup>

It was stated that Xcel’s request to close the Benson Plant and terminate the PPA was not considered to be a “project” as defined in MEPA and, if it were, would be exempt as it’s a financial transaction. NAF and Beaver Creek find this to be fundamentally incorrect, citing Minn. Rules<sup>28</sup> and EQB’s 1982 Statement of Need

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Petition for Reconsideration by Minnesota Turkey Growers Association (MTGA) (February 9, 2018) at page 2.

<sup>25</sup> Comment by North American Fertilizer, LLC and Beaver Creek Transport, Inc. (September 1, 2017) at page 2.

<sup>26</sup> *Id.* at page 3.

<sup>27</sup> *Id.* at page 2.

<sup>28</sup> [Minn. Rules 4410.0200](#), Subp. 65. Project. "Project" means a governmental action, the results of which would cause physical manipulation of the environment, directly or indirectly. The determination of whether a project requires environmental documents shall be made by reference to the physical activity to be undertaken and not to the governmental process of approving the project.

[Minn. Rules 4410.4600](#), Subp. 21. Construction projects. The following projects are exempt:

A. Construction of accessory appurtenant structures including garages, carports, patios, swimming pools,



and Reasonableness for a Proposed Environmental Review Rules. They believe the decision regarding the Benson PPA is a governmental action<sup>29</sup> subject to MEPA.<sup>30</sup> “Relying on the exemptions cited by Xcel bypasses MEPA and ignores the intent underlying the rules.”

- They reiterate the Commission’s duty to conduct an environmental review before approving Xcel’s petition and that there is ample evidence in the record of environmental impacts that were not analyzed. “[G]ranting Xcel’s request to close the Plant and terminate the PPA is a major governmental action, there are no applicable exemptions from MEPA<sup>31</sup>, and the record before the Commission demonstrates the potential for significant environmental effects.”<sup>32</sup>
- Finally, NAF and Beaver Creek indicate that the January 23, 2018 Order does not “acknowledge the Commission’s authority to address these [environmental] impacts and fulfill its obligation under MEPA” ... it “only appears to consider the factors outlined in the Xcel-tailored Minn. Stat. § 216B.2424, Subd. 9” (the 2017 legislation updating the biomass mandate).<sup>33</sup>

The Commission should elect to use their authority to request further environmental review as “the very purpose of discretionary authority given to

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agricultural structures excluding feedlots, or other similar buildings not changing land use or density is exempt.

- B. Accessory signs appurtenant to any commercial, industrial, or institutional facility are exempt.
- C. Operation, maintenance, or repair work having no substantial impact on existing structures, land use, or natural resources is exempt.
- D. Restoration or reconstruction of a structure is exempt, provided that the structure is not of historical, cultural, architectural, archaeological, or recreational value.
- E. Demolition or removal of buildings and related structures is exempt, except where they are of historical, archaeological, or architectural significance.

[Minn. Rules 4410.4600](#), Subp. 24. 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.

<sup>29</sup> [Minn. Stat. § 116D.04](#), Subd. 1(a)(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.

<sup>30</sup> Petition for Reconsideration by North American Fertilizer, LLC and Beaver Creek Transport, Inc. (February 9, 2018) at pages 2-4.

<sup>31</sup> NAF and Beaver Creek’s Reconsideration Petition reviews the background of the Minnesota Environmental Quality Board’s (EQB) revision of exemptions for construction activities and financial transactions on pages 4-6.

<sup>32</sup> Petition for Reconsideration by North American Fertilizer, LLC and Beaver Creek Transport, Inc. (February 9, 2018) at page 2.

<sup>33</sup> *Id.* at page 9.

the Commission under MEPA is to allow thorough environmental review in situations where such review is not explicitly required.”<sup>34</sup>

In their closing, the group states that a project that is a governmental action may not be started and a final governmental decision may not be made – such as an Order – pursuant to Minnesota’s environmental policy (Minn. Stat. § 116D.04, Subd. 2b).<sup>35 36</sup>

#### 5. Benson Power Suppliers and Haulers

The Benson Power Biomass Suppliers include: Carlson Timber & Land Clearing, Shawn Fletcher Trucking, Dukek Logging, Sawyer Timber Company, Harbo Mulch Inc., Dick Walsh Forest Products, and Precision Landscape and Tree Inc. Together with Huls Bros. Trucking, Inc. and D&D Ventures Inc., the party is known as “Benson Power Suppliers and Haulers”. They are intervenors in the Benson docket and provided initial comments and now this petition for reconsideration. They described the items the Commission should reconsider:

- Return to the record and create one that includes “information about alternative courses of action that could have resulted in alternatives paths which achieved the same, or similar, benefit to Xcel's ratepayers without the inherent uncertainty with Xcel's current plan.”<sup>37</sup>

The Benson petition provided one single option for the closure of the Benson facility and the group believes that by not discussing alternative actions, the Commission is blindly accepting Xcel’s “plan as being the best, and only, path forward.”<sup>38</sup> Additionally, the Benson Power Suppliers and Haulers believe there is potential that circumstances which could have been mitigated will affect implementation of the proposed plan that result in added cost, delay, or reduction of the ratepayer benefit.<sup>39</sup>

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<sup>34</sup> *Id.*

<sup>35</sup> [Minn. Stat. § 116D.04](#), 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.

<sup>36</sup> Petition for Reconsideration by North American Fertilizer, LLC and Beaver Creek Transport, Inc. (February 9, 2018) at page 10.

<sup>37</sup> Petition for Reconsideration by Benson Power Suppliers and Haulers (February 12, 2018) at page 2.

<sup>38</sup> *Id.* at page 3.

<sup>39</sup> *Id.*

- The Commission erred in not “... providing independent, consistent, professional and comprehensive oversight ... of Xcel's plan by including "Public Interest" in its analysis of the plan to terminate the Benson Power and Laurentian Power Purchase Agreements, and close the Benson/Fibromin Facility.”<sup>40</sup>

“[T]he Commission should have fully vetted Xcel's plan by requiring analysis and discussion of alternatives that would have resulted in equal, or similar, ratepayer benefit.” As there was no independent analysis of various options, there is nothing more than to approve what was proposed by Xcel, showing that the Commission did not exercise “independence in rendering approval of the Xcel Plan.”<sup>41</sup>

- The Benson Power Suppliers and Haulers make special note of the use of “may” in S.F.No. 1456, which Minnesota Statute defines as permissive language. Yet, the Commission acted as though mandatory language (“must”) was written and, therefore, did not exercise an independent role that would include other factors before providing their decision.<sup>42</sup>
- Finally, the issue of public interest is raised in relation to Minnesota’s biomass power mandate, [Minn. Stat. 216B.2424](#). The Benson Power Suppliers and Haulers assert that regardless of the 2017 legislation, the statute “clearly requires inclusion of Public Interest in the review process for resource decisions” and “should not have been ignored in these proceedings.”<sup>43</sup> The group believes that “consideration of factors beyond Xcel Energy's self-interest (and the self-interest of its ratepayers), should have been included in the process.”<sup>44</sup>

The factors outlined by Benson Power Suppliers and Haulers include: cost impact for the management of forests that are damaged and diseased; the reduction in fees collected by state, county, federal and private land owners for stumpage, due to reduced demand for all types of biomass; negative impacts from the loss of revenues experienced by the Benson Power Suppliers and Haulers, when their contracts are terminated; and, lastly, impacts on the rural Minnesota economy.<sup>45</sup> Had these public interest factors been integrated in the PPA analyses, the benefits of both proposals would have been significantly diminished.<sup>46</sup>

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<sup>40</sup> *Id.* at page 2.

<sup>41</sup> Petition for Reconsideration by Benson Power Suppliers and Haulers (February 12, 2018) at page 3.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at page 4.

<sup>46</sup> *Id.*

## 6. City of Benson

The City Mayor, Ms. Terri Collins, submitted comments supporting the January 23, 2018 Order and wished to respond to several comments made about the lack of public interest in the proceeding; however, as the community where the plant is located and most impacted by this proposal, they are clear with their support of terminating the PPA and closing the Benson plant.<sup>47</sup>

The City reiterated statements from their initial comments<sup>48</sup> and continues to support Xcel's Petition: "we believed then and still believe that the Petition is in the best interest of the public, particularly the citizens of Benson, and Xcel's ratepayers."<sup>49</sup>

"The City urges the Commission to deny the requests for reconsideration or rehearing because the public interest was considered during the proceedings and the PUC's Order reflect that this decision was in the public interest."<sup>50</sup> Moreover, the Mayor mentions "the PUC Order will serve the public interest by providing the City the means to build a new future without the Benson Power Plant," but "failing to provide those means could have a devastating effect on the City's economy and would go against the long-term public interest of our community."<sup>51</sup>

## 7. Laurentian Energy Authority I, LLC

As a party to the PPA and the provider of energy and capacity using biomass at facilities in Hibbing and Virginia, the Laurentian Energy Authority I, LLC (LEA) provided comments supporting the termination of the Laurentian PPA and also recently filed response comments to parties' Petitions for Reconsideration (only for the Laurentian Petition) on February 22, 2018.

LEA addressed two items: 1) MTPA's concern over the broad application of public interest instead of the narrow application as set forth in the 2017 legislation that the Commission relied on; and 2) an examination of ACLT's MEPA argument that an environmental assessment is required.<sup>52</sup>

- LEA is assured that the Commission used the correct legal standard in deciding the merits of the LEA PPA termination, which is set forth in Minn. Stat.

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<sup>47</sup> Comment by City of Benson (February 22, 2018) at page 1.

<sup>48</sup> Those comments were: the unmet hope that was created for biomass while other cleaner and less costly resources became available; operational and logistical challenges, as well as bankruptcy and receivership, signify that the business is not economically viable; the City of Benson chose to work with Xcel so it could mitigate the impacts of the plant closure on their community.

<sup>49</sup> Comment by City of Benson (February 22, 2018) at page 1.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> Comment by Laurentian Energy Authority I, LLC (February 22, 2018) at page 3.

216B.2424, Subd 9. LEA states that paragraph (c) clearly contemplates approval of PPA termination upon only (i) agreement by the parties and (ii) a determination that termination is in the best interests of Xcel's customers.<sup>53</sup> Since agreement of the parties has been obtained, LEA believes the only question for the Commission was whether early termination of the LEA PPA was in the best interests of Xcel's customers.<sup>54</sup> Through its order, the Commission determined that early termination of the LEA PPA met the standard(s), yet ACLT argued that the Commission should have applied a broader public interest test that included ancillary consequences of the PPA termination, both economic and environmental.<sup>55</sup> LEA simply retorts "the words of the statute here are explicit and exclude the consideration of any criteria for approval in addition to, or broader than, the 'best interests' of NSP's [Xcel's] customers."<sup>56</sup> If that were not the case, LEA continues, the legislature in other instances has not hesitated to say directly and openly when the Commission should undertake specific environmental or other factors in matters.<sup>57</sup> Moreover, since the legislature chose to not include this broader public interest test when considering PPA terminations, "it made its intention clear: no assessment of such broader criteria was necessary or permissible here."<sup>58</sup> (Emphasis added by commenter.)

LEA reminds parties that the Commission's "jurisdiction and authority are limited by the boundaries set by its authorizing legislation" and it "would be legally unjustifiable for the Commission to ignore the express prescription in Subdivision 9(c) above for approval of PPA termination by unilaterally adding its own sense of 'public interest' or other criteria not set out by the legislature."<sup>59</sup>

- LEA focuses on ACLT's belief that the Commission should have required some form of environmental review per MEPA. LEA disagrees with ACLT's assessment that the proposed PPA terminations and closure of the Benson facility constitutes a "project" that would require such a review.<sup>60</sup>
- LEA disentangles the arguments posed by ACLT that seem to be woven with the circumstances of the Benson facility, e.g. the concerns regarding the use of turkey litter cannot be applied to the LEA PPA as LEA does not use turkey litter and LEA is not closing or discontinuing operations, but remaining while it makes

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<sup>53</sup> Comment by Laurentian Energy Authority I, LLC (February 22, 2018) at page 4.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at pages 4-5.

<sup>60</sup> *Id.* at page 6.

efficiency, and it plans to use some biomass, rendering the biomass market – and resulting economic and environmental effects – claims immaterial to LEA.<sup>61</sup>

- As was mentioned earlier, the legislature would have stipulated in Subd 9 if it intended for the PPA terminations to be subject to environmental review under MEPA, but “the legislature made a deliberate decision to preclude such review.”<sup>62</sup> LEA explains that MEPA, while important, is not the binding statute:

where two statutes, one general and one specific, may cover a similar subject matter, the specific statute controls the general statute ... When it comes to what statute governs specific LEA PPA approval, the more recent statute’s precise formulation governs, to the exclusion of other potentially conflicting laws.<sup>63</sup>

- Finally, LEA asserts that MEPA does not apply to the LEA PPA and refers to Minn. Rules 4410.0200, Subp. 65: the determination of whether a project requires environmental documents shall be made by reference to the “physical activity” to be undertaken and *not the process of approving the project*.<sup>64</sup> (Emphasis added.)
- The types of projects requiring environmental review are outlined and involve the construction or expansion of a facility, or some activity. Since Xcel’s Petition is focused on a PPA termination that does not involve any new construction or expansion or physical activity, it would not mandate preparation of an EAW or EIS or related review by the Commission.<sup>65</sup> However, LEA footnotes that “discretionary review can only be obtained by filing a petition with the MEQB which meets specific substantive criteria. Minn. Stat. Section 116D.04, subd. 2(a)(c).”<sup>66</sup>

## 8. Xcel Energy

Xcel Energy filed response comments to all the Petitions for Reconsideration (both Benson and Laurentian) on February 22, 2018.

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<sup>61</sup> Comment by Laurentian Energy Authority I, LLC (February 22, 2018) at pages 6-7.

<sup>62</sup> *Id.* at page 7.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

The Company reviewed the reconsideration petitions and found they did not meet any of the criteria for granting a rehearing or reconsideration of the January 23, 2018 Order, so the petitions for rehearing and reconsideration should be denied.<sup>67</sup>

“The broader ‘public interest’ standard cited by some parties—in their comments, during the Commission hearing and again in their petitions for reconsideration— applies only to the Company’s request for a variance to the Fuel Clause Adjustment rules in order to flow certain transaction costs through the fuel clause.”<sup>68</sup> It does not apply to the broader application of the full proposals brought forth by Xcel.

Xcel concluded that many of the arguments in the reconsideration petitions have been considered and rejected by the Commission and should not be granted for a rehearing, reconsideration, or amending the January 2018 Order.<sup>69</sup>

## 9. Department Answer

The Department filed their Answers to the Petitions for Reconsideration for each docket on February 22, 2018.

### ***Benson Petition***

Following the review of [Minn. Rules 7829.3000](#), subp 2 (Petition After Commission Decision), DOC noted that “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.

The resulting new issues, new evidence, or errors must persuade the Commission to rethink its original decision and that a new decision is more consistent with the facts and the law.<sup>70</sup>

The Department reviewed Petitions made by Minnesota Timber Producers Association (TPA), Associated Contract Loggers & Truckers of Minnesota (ACLT), Benson Power Biomass Suppliers and Haulers, Minnesota Turkey Growers Association (MTGA), and North American Fertilizer, LLC and Beaver Creek Transport Inc. (NAF and Beaver Creek).

*TPA*

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<sup>67</sup> Comment by Xcel Energy (February 22, 2018) at page 1.

<sup>68</sup> *Id.* at page 2.

<sup>69</sup> *Id.*

<sup>70</sup> Comment for Benson PPA Docket by Department of Commerce, Division of Energy Resources (February 22, 2018) at page 4.

*Staff note: TPA's Petition was filed jointly in both Benson and Laurentian dockets, so the comments and DOC's responses will be found in the Laurentian section below.*

TPA indicates that the Commission erred in not considering broader public interest when it decided to approve Xcel's request for a variance to [Minn. Rules 7825.2600](#) (Electric Energy Adjustment). DOC agreed with PTA that there is no definition of "public interest" in the context of rule variances within [Minn. Rules 7829.0100](#) (Definitions), 7829.3200 (Other Variances) or Minnesota Statutes; however, DOC referred to the January 23, 2018 Order on page 21 where it specifically outlines the criteria required to be considered and the evaluation that was provided before the Commission finds the public interest test has been met.<sup>71</sup>

DOC highlighted that TPA's Petition "helpfully indicates where in the record the evidence already exists" which can only mean their "evidence generally is not new."<sup>72</sup>

Regarding the consideration of "public interest", the Department stated that the Commission chose in this instance to "grant greater weight to ratepayer impacts than other considerations when determining the public interest."<sup>73</sup>

Next, the DOC reviewed TPA's claim that the Commission erred because [Minn. Statutes § 116C.773](#) (Prairie Island Contract) remains in force and is binding to the parties. As this "issue was thoroughly discussed in the record of the proceeding by the parties," the Commission did consider those discussions.<sup>74</sup>

The Department determined that TPA's Petition for Reconsideration "does not identify any errors, identify new issues, or provide new evidence regarding the Order's interpretation of public interest."<sup>75</sup>

#### *ACLT*

*Staff note: ACLT's Petition was filed jointly in both Benson and Laurentian dockets, so the comments and DOC's responses will be found in the Laurentian section below.*

The second Petition DOC examined is ACLT's claim that MEPA would require the Commission to perform an environmental review. Again, since ACLT refers to items both in the record and during the hearing where this issue was discussed, the Petition did not raise new issues.<sup>76</sup> The Department reminds ACLT that projects found within

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<sup>71</sup> Comment for Benson PPA Docket by Department of Commerce, Division of Energy Resources (February 22, 2018) at page 5.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at page 6.



[Minn. Rules 4410.4600](#) (Exemptions), Subp. 3-25 and 27 are exempt from Minnesota Rules parts 4410.0200 to 4410.6500 and under Subp 24 is where the language regarding exemption of Financial Transactions is located, which was discussed during the hearing.

Subp. 24. **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.”<sup>77</sup>

In conclusion, the Department recommended that the Commission not reconsider the Order.

#### *MTGA*

Following review of MTGA’s Petition, which the DOC noted is similar to MTPA’s since it focused on the Commission’s error in allowing Xcel’s biomass capacity to fall below 75 MW. As MTGA relies on Benson for disposal of their turkey litter, their remedy was to request the Commission to amend their effective date of the Order to three years. DOC’s responded that “this issue was thoroughly discussed in the record of the proceeding by the parties and the Commission considered those discussions.”<sup>78</sup> It is concluded that “MTGA 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.”<sup>79</sup>

DOC also responded to MTGA’s assertion that “there is nothing in the statute prohibiting the Commission from adopting a delayed effective date” by reminding parties that criteria set in Minn Statutes § 216B.2424 subd. 9 (c) includes the ratepayer benefit/cost test.<sup>80</sup> “Delaying the effective date of the Commission’s Order would not pass a ratepayer test because the delay would increase ratepayer costs and decrease ratepayer benefits.”<sup>81</sup>

#### *NAF and Beaver Creek*

The Department addresses the four items NAF and Beaver Creek contend the Commission erred on.

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<sup>77</sup> Comment for Benson by Department of Commerce, Division of Energy Resources (February 22, 2018) at page 6.

<sup>78</sup> *Id.* at page 7.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

- NAF and Beaver Creek believe the “Commission failed to recognize that Xcel’s proposal was a ‘project’ with ‘the potential for significant environmental effects.’”<sup>82</sup> DOC referenced the definition of a “project” under MEPA<sup>83</sup> before pointing out that “Xcel’s Petition is to shut down a power plant; in other words, Xcel’s proposal is to cease the physical manipulation of the environment. Therefore, Xcel’s proposal is not a “project” under MEPA and the NAF-BCT Petition is without merit on this issue.”<sup>84</sup>
- If the proposal was considered a “project” under MEPA, the Commission seemed to agree with Xcel that it would fall within the exemption provided by Minnesota Rules 4410.4600 subp. 21 E (Construction: Demolition or removal of buildings and related structures is exempt, except where they are of historical, archaeological, or architectural significance).<sup>85</sup> The Department simply states that “[c]learly, the language describes the construction aspects of Xcel’s Petition. Therefore, the NAF-BCT Petition is without merit on this issue.”<sup>86</sup>
- The Department moved on the second MEPA exemption discussed by NAF and Beaver Creek, Minn. Rules 4410.4600 subp. 24 (Financial Transactions). The group believes the exemption was intended only to exempt activities that will have no physical impact on the land. “Again, even assuming Xcel’s proposal involves a “project” under MEPA, the plain language of the exemption under Minnesota Rules 4410.4600 subp. 24 indicates that the exemption is for purchasing property, equipment, and so forth. Clearly, the language describes the financial aspects of Xcel’s Petition. Therefore, the NAF-BCT Petition is without merit on this issue.”<sup>87</sup>
- The last argument addressed by the Department is the belief that the January 23, 2018 Order did not consider the environmental impacts across the state of closing the Benson plant. The Department remarks that NAF and Beaver Creek themselves indicate where this information is found in the record. Ultimately, “the argument is not new and does not provide a basis for reconsideration. Further, as discussed above, Minnesota Statutes § 216B.2424 subd. 9 (c) establishes a ratepayer test for the Commission to consider when making a determination. Impacts across Minnesota are not relevant to the ratepayer test required by Minnesota Statutes. Therefore, the NAF-BCT Petition is without merit on this issue.”

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<sup>82</sup> *Id.*

<sup>83</sup> A “project” as “a governmental action, the results of which would cause physical manipulation of the environment, directly or indirectly.” Minn. Rules 4410.0200, Subp. 65.

<sup>84</sup> Comment for Benson by Department of Commerce, Division of Energy Resources (February 22, 2018) at page 7.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at page 8.

### *Benson Power Suppliers and Haulers*

The Department reviewed two arguments from Benson Power Suppliers and Haulers. The first is the lack of alternatives discussed or analyzed outside of what Xcel proposed, to which DOC responds mentioned that “Minnesota Statutes § 216B.2424, Subd. 9 does not require consideration of alternatives. Second, the Commission’s Order considered all of the alternatives offered by the various parties. The fact that parties did not offer alternatives is not an error on the part of the Commission.”<sup>88</sup>

The second issue Benson Power Suppliers and Haulers stated was the deficiency of “independent, consistent, professional and comprehensive oversight” of Xcel.<sup>89</sup> Benson Power Suppliers and Haulers suggest “that independent oversight would require the Commission to include factors beyond the two factors required by Minnesota Statutes § 216B.2424 subd. 9” and list some factors that should have been included.<sup>90</sup> “None of the factors provided impact a ratepayer test and considerations that affect groups other than ratepayers have been excluded from Commission consideration by the legislature.”<sup>91</sup>

### *Laurentian Petition*

The Department noted that two parties filed reconsideration petitions for the termination of the LEA PPA: Minnesota Timber Producers Association (TPA) and Associated Contract Loggers & Truckers of Minnesota (ACLT).<sup>92</sup> As the Petitions were filed in both dockets, the arguments have been discussed within the context of Benson above, but staff will include the analysis below.

Again, following another review of Minn. Rules 7829.3000, subp 2 (Petition After Commission Decision), DOC noted that “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.

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<sup>88</sup> Comment for Benson by Department of Commerce, Division of Energy Resources (February 22, 2018) at page 8.

<sup>89</sup> Comment for Benson by Department of Commerce, Division of Energy Resources (February 22, 2018) at page 8 and also in Benson Power Suppliers and Haulers’ Petition at page 2.

<sup>90</sup> Comment for Benson by Department of Commerce, Division of Energy Resources (February 22, 2018) at page 8.

<sup>91</sup> *Id.*

<sup>92</sup> Comment for Laurentian PPA Docket by Department of Commerce, Division of Energy Resources (February 22, 2018) at pages 5-6.

The resulting new issues, new evidence, or errors must persuade the Commission to rethink its original decision and that a new decision is more consistent with the facts and the law.<sup>93</sup>

#### *TPA*

As outlined earlier, TPA's Petition indicates that the Commission erred in not considering broader public interest when it decided to approve Xcel's request for a variance to [Minn. Rules 7825.2600](#) (Electric Energy Adjustment). DOC agreed with PTA that there is no definition of "public interest" in the context of rule variances within [Minn. Rules 7829.0100](#) (Definitions), 7829.3200 (Other Variances) or Minnesota Statutes; however, DOC referred to the January 23, 2018 Order on page 21 where it specifically outlines the criteria required to be considered and the evaluation that was provided before the Commission finds the public interest test has been met.<sup>94</sup>

DOC highlighted that TPA's Petition "helpfully indicates where in the record the evidence already exists" which can only mean their "evidence generally is not new."<sup>95</sup>

Regarding the consideration of "public interest", the Department stated that the Commission chose in this instance to "grant greater weight to ratepayer impacts than other considerations when determining the public interest."<sup>96</sup>

Next, the DOC reviewed TPA's claim that the Commission erred because [Minn. Statutes § 116C.773](#) (Prairie Island Contract) remains in force and is binding to the parties. As this "issue was thoroughly discussed in the record of the proceeding by the parties," the Commission did consider those discussions.<sup>97</sup>

The Department determined that TPA's Petition for Reconsideration "does not identify any errors, identify new issues, or provide new evidence regarding the Order's interpretation of public interest."<sup>98</sup>

#### *ACLT*

The second Petition DOC examined is ACLT's claim that MEPA would require the Commission to perform an environmental review. Again, since ACLT refers to items both in the record and during the hearing where this issue was discussed, the Petition did not raise new issues.<sup>99</sup> The Department reminds ACLT that projects found within

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<sup>93</sup> *Id.* at page 3.

<sup>94</sup> Comment for Laurentian PPA Docket by Department of Commerce, Division of Energy Resources (February 22, 2018) at pages 3-4.

<sup>95</sup> *Id.* at page 4.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

[Minn. Rules 4410.4600](#) (Exemptions), Subp. 3-25 and 27 are exempt from Minnesota Rules parts 4410.0200 to 4410.6500 and under Subp 24 is where the language regarding exemption of Financial Transactions is located, which was discussed during the hearing.

Subp. 24. **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.”<sup>100</sup>

In conclusion, the Department recommended that the Commission not reconsider the Order.

## V. Staff Analysis

The question for the Commission is whether it thinks there is reason to change its earlier decision reflected in the January 23, 2018 Order. If arguments raised by the parties have already been addressed by the Commission, and if no new issues or legal arguments have been raised, then the parties’ requests are simply restatements of arguments previously made in this proceeding.

The Department’s Answer provided valuable information and analysis to each of the Petitions for Reconsideration. Many of the arguments provided by the parties were established in the record and considered by the Commission. Staff agrees with the Department’s arguments and recommendation included in its Answer.

[DECISION OPTIONS ON NEXT PAGE]

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<sup>100</sup> Comment for Laurentian Docket by Department of Commerce, Division of Energy Resources (February 22, 2018) at page 5.

## VI. Decision Options

1. Grant Minnesota Timber Producers Association's request for reconsideration
2. Deny Minnesota Timber Producers Association's request for reconsideration
3. Grant Associated Contract Loggers & Truckers of Minnesota's request for reconsideration and:
4. Deny Associated Contract Loggers & Truckers of Minnesota's request for reconsideration.
5. Grant Minnesota Turkey Grower's Association's request for reconsideration.
6. Deny Minnesota Turkey Growers Association's request for reconsideration.
7. Grant North American Fertilizer and Beaver Creek Transport's request for reconsideration.
8. Deny North American Fertilizer and Beaver Creek Transport's request for reconsideration.
9. Grant Benson Power Suppliers and Haulers' request for reconsideration.
10. Deny Benson Power Suppliers and Haulers' request for reconsideration.
11. For procedural purposes, grant reconsideration for the limited purpose of tolling the 60-day time period to allow additional time for preparation of the Commission's written order on the merits.

## VII. Attachment A: Relevant Rules and Statutes

### 1. Minnesota Statute - 216B.27 REHEARING; CONDITION PRECEDENT TO JUDICIAL REVIEW.

Subdivision 1. **Applying for rehearing.** Within 20 days after the service by the commission of any decision constituting an order or determination, any party to the proceeding and any other person, aggrieved by the decision and directly affected thereby, may apply to the commission for a rehearing in respect to any matters determined in the decision. The commission may grant and hold a rehearing on the matters, or upon any of them as it may specify in the order granting the rehearing, if in its judgment sufficient reason therefor exists.

Subd. 2. **Contents of application; condition precedent for review.** The application for a rehearing shall set forth specifically the grounds on which the applicant contends the decision is unlawful or unreasonable. No cause of action arising out of any decision constituting an order or determination of the commission or any proceeding for the judicial review thereof shall accrue in any court to any person or corporation unless the plaintiff or petitioner in the action or proceeding within 20 days after the service of the decision, shall have made application to the commission for a rehearing in the proceeding in which the decision was made. No person or corporation shall in any court urge or rely on any ground not so set forth in the application for rehearing.

Subd. 3. **Rules; procedural requirements; commission's authority.** Applications for rehearing shall be governed by general rules which the commission may establish. In case a rehearing is granted the proceedings shall conform as nearly as may be to the proceedings in an original hearing, except as the commission may otherwise direct. If in the commission's judgment, after the rehearing, it shall appear 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. Any decision, order, or determination made after the rehearing reversing, changing, modifying, or suspending the original determination shall have the same force and effect as an original decision, order, or determination. Only one rehearing shall be granted by the commission; but this shall not be construed to prevent any party from filing a new application or complaint. No order of the commission shall become effective while an application for a rehearing or a rehearing is pending and until ten days after the application for a rehearing is either denied, expressly or by implication, or the commission has announced its final determination on rehearing.

Subd. 4. **Deadline to grant application.** Any application for a rehearing not granted within 60 days from the date of filing thereof, shall be deemed denied.

Subd. 5. **Effect of decision on application.** It is hereby declared that the legislative powers of the state, insofar as they are involved in the issuance of orders and decisions by the commission, have not been completely exercised until the commission has acted upon an application for rehearing, as provided for by this section and by the rules of the commission, or until the application for rehearing has been denied by implication, as above provided for.

2. Minnesota Rule - 7829.3000 PETITION AFTER COMMISSION DECISION.

Subpart 1. **Time for request.** 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.

Subp. 2. **Content of request.** 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.

Subp. 3. **Service.** A petition for rehearing, amendment, vacation, reconsideration, or reargument, and an answer, reply, or comment, must be served on the parties and participants in the proceeding to which they relate.

Subp. 4. **Answers.** Other parties to the proceeding shall file answers to a petition for rehearing, amendment, vacation, reconsideration, or reargument within ten days of service of the petition.

Subp. 5. **Replies.** Replies are not permitted unless specifically authorized by the commission.

Subp. 6. **Commission action.** The commission shall decide a petition for rehearing, amendment, vacation, reconsideration, or reargument with or without a hearing or oral argument. The commission may vacate or stay the order, or part of the order, that is the subject of the petition, pending action on the petition.

Subp. 7. **Second petition not entertained.** A second petition for rehearing, amendment, vacation, reconsideration, or reargument of a commission decision or order by the same party or parties and upon the same grounds as a former petition that has been considered and denied, will not be entertained.



### VIII. Attachment B: Table Briefly Summarizing DOC Responses to Petitions

MTPA	Department Answer
1. The Commission did not consider the public interest.	<ul style="list-style-type: none"> <li>Commission already determined to grant greater weight to ratepayer impacts.</li> </ul>
2. The Commission erred in allowing Xcel's biomass capacity to fall below 75 MW.	<ul style="list-style-type: none"> <li>This was discussed thoroughly and previously considered.</li> </ul>
ACLT	Department Answer
1. No environmental review was completed.	<ul style="list-style-type: none"> <li>Financial transactions are exempt.</li> <li>The part that is not a financial transaction—demolition—is exempt under Minn. Rule. 4410.4600 subp 21 E.</li> </ul>
MTGA	Department Answer
1. Requests 3 years delay from date of Order.	<ul style="list-style-type: none"> <li>Issue was thoroughly discussed.</li> </ul>
2. Nothing in statute prevents 3 year delay.	<ul style="list-style-type: none"> <li>Delay would increase ratepayer costs.</li> </ul>
NAF-Beaver Creek Transport	Department Answer
1. Commission failed to recognize Xcel's proposal was a "project" with environmental effects.	<ul style="list-style-type: none"> <li>Xcel's proposal is to cease the physical manipulation of the environment. Therefore, Xcel's proposal is not a "project" under MEPA.</li> </ul>
2. Minn. Rule. 4410.4600 subp. 21 E exemption does not apply.	<ul style="list-style-type: none"> <li>Minn. Rules 4410.4600 subp. 21 E is for the demolition or removal of buildings and related structures.</li> </ul>
3. Minn. Rule. 4410.4600 subp. 24 was intended only to exempt activities without physical impact on the land.	<ul style="list-style-type: none"> <li>The rule clearly indicates that the exemption is for purchasing property, equipment, and so forth.</li> </ul>
4. Order does not consider the environmental impacts.	<ul style="list-style-type: none"> <li>Not a new issue and Minn. Stat. § 216B.2424 subd. 9 (c) establishes a ratepayer test.</li> </ul>
Benson Power Suppliers and Haulers	Department Answer
1. Commission did not consider alternatives.	<ul style="list-style-type: none"> <li>Statute does not require consideration of alternatives.</li> <li>Commission still considered all alternatives offered by the various parties.</li> </ul>
2. Commission did not provide comprehensive regulatory oversight.	<ul style="list-style-type: none"> <li>Commission considered ratepayer impacts.</li> </ul>