

# *Friends of the Riverfront*

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Daniel P. Wolfe, Executive Secretary  
Minnesota Public Utilities Commission  
121 7th Pl E #350  
St Paul, MN 55101

November 22, 2017

Re: In the Matter of Xcel Energy's Renewable Development Fund (RDF) Annual Report,  
Tracker Account True-up, and Request for 2018 Rider Factor, PUC Docket Number: E-002/  
M-17-712

Dear Mr. Wolfe:

Friends of the Riverfront, a Minnesota non-profit whose mission is to protect and enhance the natural and cultural resources of the Mississippi riverfront, appreciates the opportunity to comment on Crown RDF grant.

Since 2005, we have followed the Crown matter closely and are intervenors in the FERC proceedings. In order to educate ourselves we have reviewed the FERC file going back to 1991, as well as, the Minneapolis Park Board's records.

After Friends became aware of Crown's RDF grant, we had difficulty getting information about the grant. We could not understand why Crown had been given the grant for a project on Park Board land which had so many protections both under written agreements and under the FPA. We were concerned that Xcel and the RDF Board were only hearing from Crown and without knowing both sides of the story, they would not have the ability to make good decisions. As it was so difficult to get information or provide information, we raised concerns to the PUC about transparency and oversight in the RDF process.

As it continues to confound us as to why Crown's grant has not been terminated we ask that the Commission:

Order that no further payments for Crown be included in any RDF rate rider

Advise Xcel that the Crown Grant contract has lapsed and is of no further effect

With decades of information, Friends wishes to focus its comments on Crown's precarious financial situation and the risks that it poses to the rate payer. The attached exhibits provide more detail.

From the project's start in 1991, Crown struggled to find financing. Over the decades, they asked the Park Board and the City of Minneapolis to consider owning or financing the venture.

Thus the Park Board, due to fears of losing control of their land, repeatedly looked at ownership of the project. In doing so they had access to Crown's finances and projections. The Park Board consulted with experts such as North American Hydro, in evaluating the proposals. In their many attempts, the Park Board could not come to terms with Crown and found that the venture was not profitable and thus not financially viable, even for a public entity.

Given Crown's strained resources and the likelihood that the project would not be profitable, the City and the Park board, along with other experts, have consistently expressed concerns that **the project could be abandoned before completion or during operation.**

To those concerns, Crown has responded that Xcel would step in and complete the abandoned project. *Xcel's expense in taking on a unprofitable project that was abandoned would, of course, be thrust on the ratepayers.*

Xcel has said that there is no risk to the ratepayers in continuing to make the grant available to Crown as they can only be paid upon achievement of a milestone that would involve their digging. This approach is naive and lacks imagination of the ways that assets could be striped from the LLC, leaving the project abandoned after a milestone was paid.

This is important to consider because from public documents, Crown's finances are precarious. These troubles surfaced in 2009 when a collection matter was filed by the widow of an early investor.

More was revealed about Crown's finances from the proceedings in *Dusenbery v Crown, et al.* This simple collection action by Dr. Kathryn Dusenbery to collect the proceeds of her \$250,000 loan was turned into a soap opera by Crown who alleged that Dr. Dusenbery and Crown's attorney had a romantic relationship and there was a conspiracy to wrest control of Crown from its owners<sup>1</sup>.

According to Dr. Dusenbery, Crown failed to pay the Fredrickson law firm who had secured payment for their work with a lien on the turbines and generators. When Frederikson sought to take possession, Crown scrambled to find funds to pay them off. Due to Crown's lack of funds, Dusenbery's attorney stated that work on the project was not getting done because vendors were not being paid.<sup>2</sup>

The situation was so dire, that Crown's attorney could not find any one to lend Crown money except Dr. Dusenbery who agreed to loan Crown \$250,000 for one year at 20% interest.

Dusenbery's attorney claimed in court that the financial statements given to FERC were not accurate in that they did not include the debt that Crown had incurred.<sup>3</sup>

Symphony, another hydro developer, whose attorney had formerly represented Crown, echoed these concerns in its 2015 intervention to FERC advising: "... that it is prudent that the Commission inquire into a number of additional concerns with respect to Crown Hydro before granting any amendment. One of those issues is whether Crown has adequate financial resources to build, own and operate a hydro- electric project in downtown Minneapolis, the

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<sup>1</sup>Those counts were dismissed by the District Court and the decision was upheld on appeal

<sup>2</sup> Crown disputes that vendors were not being paid.

<sup>3</sup> Crown claims that the financial statements given to FERC were accurate.

state's largest city. A second concern – and related to the prior issue – is the status of the proposed turbine and generator equipment, which has sat idle in storage for a decade and one-half. Not only are there legitimate questions on whether the equipment remains useable, but also whether the equipment is subject to liens and possible judgments of outside investors who have taken security interests in the equipment.”


Recently, Crown responded to inquiries from Xcel about why it had not been forthcoming about the litigation and the liens on equipment. Crown responded that it was not material. This is belied by Mr. Hawk's affidavit where he said that the loss of the turbines would be the end of the project. It is also significant that Crown's response did not accurately state all the liens that it had and underestimated the debt it suffered.

The litigation also exposed some strange practices such as paying exorbitant deferred fees for storing the generators in a garage instead of a much cheaper climate controlled warehouse. Given such strange practices, if this grant were to continue does Xcel have the forensic audit capacity to determine if the charges are fair and reasonable to the ratepayer?

It is clear that the 3rd amendment lapsed due to the failure of Crown and Xcel to amend the agreement. The Commission never intended that a Type 2 modification done without Commission express approval should be interpreted by Crown to give it a perpetual access to an RDF grant.

Thus Friends of the Riverfront, respectfully asks that the PUC orders that no further ratepayer funds be expended on the Crown project.

Sincerely,



Edna C. Brazaitis