

**STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

121 Seventh Place East, Suite 50
St. Paul, Minnesota 55101-2147

**In the Matter of Xcel Energy's Renewable Development Fund (RDF) Annual Report,
Tracker Account True-up, and Request for 2018 Rider Factor
MPUC Docket No. E002/M-17-712**

REPLY COMMENTS of CROWN HYDRO, LLC

December 15, 2017

I. INTRODUCTION AND BACKGROUND

Crown Hydro, LLC ("Crown Hydro") previously filed initial comments on the Minnesota Public Utilities Commission's ("Commission") notice, seeking comment regarding the RDA and RDF grant contract. These Reply Comments will address broad issues in comments filed by other parties.

Crown Hydro Initial Comments

In its Initial Comments, Crown Hydro addressed the applicability of *Minnesota Laws 2017, Chapter 94, Article 10, Section 3, Subd. 1(b)* and *Subd. 29* as well as provided discussion with respect to action on the Crown Hydro RDF contract otherwise. In these Reply Comments, Crown Hydro will provide additional detail on the status of the project, including progress made with the Federal Energy Regulatory Commission ("FERC"), investments made by Crown Hydro, compatibility of the project and opportunities for participation, as well as response to arguments that there is an alternative interpretation of *Minnesota Laws 2017, Chapter 94, Article 10, Section 3, Subd. 1(b)* or *Subd. 29*.

Some parties want Crown Hydro's RDF contract cancelled and have argued that leaving the contract in place is a waste of ratepayer funds. However, the opposite is true. \$1,538,591 of

ratepayer funds have already been invested in this project, as well as over \$5,000,000 Crown Hydro and countless hours invested by the project owners. Pulling the RDF grant at this point would actually waste ratepayer funds by making the project impractical to complete, thus, throwing away over \$1,500,000 of ratepayer funds already spent. Leaving the RDF grant in place allows Crown Hydro to continue to invest its own funds at its own risk, while only allowing recovery from ratepayers once the project is moving forward in a secure way. The RDF fund is intended to and should continue support renewable projects that it previously committed to and that Crown Hydro has relied on in investing its own money.

II. RELIANCE ON CONTINUED CONTRACT FUNDS AVAILABILITY

As stated in Initial Comments, Crown Hydro has continued to pursue the project, has spent significant funds in doing so, and has made significant progress. In their initial comments, some parties have suggested that Crown Hydro is not diligently moving the project forward. However, the opposite is true. There was a period, after failing to reach agreement with respect to its original location, during which Crown Hydro was at a standstill and seemingly not moving forward on the project as it worked on alternate plans to move forward. More recently, Crown Hydro has made concrete progress, identified a new location with a willing land owner¹, the United States Army Corps of Engineers (“Corps”), which resulted in an amended license application. This progress has been made without additional ratepayer funds, rather only with Crown Hydro’s continued investment.

This continued progress and investment has been made after putting together a strong team of advisors that will give Crown Hydro the best chance to succeed. The team includes

¹ The Army Corps of Engineers is operating under a Memorandum of Understanding for Hydropower and is committed to working with FERC and private parties such as Crown Hydro to develop power facilities. <https://www.ferc.gov/media/news-releases/2016/2016-3/07-21-16-A-3.pdf> and <https://www.ferc.gov/legal/mou/2016/07-21-16.pdf>. Crown has had numerous meetings and communications with the Corps to facilitate moving the project forward.

FERC counsel, Duncan Weinberg Genzer & Pembroke, PC; project engineers, Wenck Associates, Inc.; local counsel, Martin & Squires, PA; and Section 106 consultants, Streamline Associates, LLC. Typically, the project applicant operates as the FERC representative for working through this process, but due to the level of participation of other parties, FERC is seeking to assign one of its own staff to facilitate moving the parties through the process.² More detail with respect to the firms and individual advisors is included in **Exhibit A**.

A. Progress Made

While much work was done prior to November 2011, some detail of the efforts and investments made since then help to understand the significant progress and ongoing efforts to move the project forward. A summary of the steps includes:

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|--|---------------------------|
| • Initial Proposal to the Corps | Nov. 2011 |
| • Access License Agreement with USACE
(for the purposes of soil borings/other development tasks) | June 2012 |
| • FERC Lic. #11175-025 Amendment
(Application Submitted) ³ | April 30, 2015 |
| • FERC Notice of Accepted Filing | July 30, 2015 |
| • Participate in development and submission of Aesthetic
Flow study | May 2016 to
March 2017 |
| • Complete Phase 1a Cultural Resources Background
Literature Review and Recommendation ⁴ | October 2016 |
| • Close of Public Comment Period on EA | Nov. 2016 |
| • Develop and submit Draft Programmatic Agreement ⁵ | Aug. 2017 |
| • NHPA 106 Process consultation with MnSHPO and | Feb. 2016 to |

² On December 6, 2017, FERC hosted a section 106 consultation during which it announced it would seek to assign staff to facilitate with the process.

³ Copies of these documents listed are available at FERC website <https://elibrary.ferc.gov/idmws/search/fercgensearch.asp> by entering docket number P-11175.

⁴ Attached as **Exhibit B** is the Draft Programmatic Agreement, which includes Cultural Resources Background Literature Review and Recommendation, which is helpful in that it provides illustration of the project

⁵ Id.

Crown Hydro is currently working through the National Historic Preservation Act Section 106 process which requires FERC to address effects of the project on historic sites and coordinate with cultural resource field studies and other project-related environmental studies.⁶

Many parties are actively participating in that process, as 162 updates, supplements and comments have been filed since the application was filed on August 30, 2015.⁷ Throughout this process, party concerns are being addressed. For example, some parties have maintained they object to the falls being dried up. Crown Hydro has made clear that this will not happen.

With respect to water flows, Crown Hydro has participated in Xcel's recent study and agreed that Crown Hydro will not take any water that would remove white-water flow over the falls, as Crown Hydro will not take water if flows would drop below 300 cfs.⁸ This is an increase from what Xcel previously had been able to take down to 100 cfs.

Other commenters have contested that this project cannot be incorporated into their plan for the area. Crown Hydro believes otherwise and that its project not only could be incorporated into their plan, but through interpretative aspects, could improve the area. In fact, as noted by one commenter, the Minneapolis Park and Recreation Board ("MPRB") sought to acquire the project for itself at one point. The MPRB even formally took action to incorporate the hydro project into Mill Ruins Park.⁹ Some parties have different plans with specific inclusions that they want within the park, which Crown Hydro is interested in facilitating.

⁶ More detailed description of the process outlined by FERC is located at <https://www.ferc.gov/industries/gas/enviro/guidelines/cultural-guidelines-final.pdf>

⁷ See FERC Website.

⁸ See study attached as **Exhibit C**.

⁹ See **Exhibit D**, Minneapolis Park & Recreation Board ("MPRB") Resolution 99-176. While MPRB currently does not incorporate hydroelectric into its plans for the Mill Ruins Park, this demonstrates there are scenarios wherein many parties can perceive benefits to inclusion.

One example noted within some parties' comments was for canoe portage opportunities. Crown Hydro accommodated this desire and made a proposal to include such facilities. Now is the time Crown Hydro would like to meet with these interested parties and make its plan the best it can be. This is what the FERC 106 process is intended to facilitate. Crown Hydro is hopeful these parties that are interested in having certain attributes in the project or park will work with Crown Hydro and in the Section 106 process to develop attributes that it desires.

Throughout all of this process, the positive attributes of the project remain the same as they were when the grant was awarded or gotten stronger. Crown Hydro will still deliver clean, carbon-free, renewable energy in the center of a region where demand is highest, reducing the need for transmission lines coming in from far-away places. Since the grant was awarded, Minnesota ratepayers' desire for having renewable, carbon-free energy has grown. Crown Hydro can provide valuable interpretive, interactive attributes to a park that is located at the site which drove the development of Minneapolis – a power source that supported the region's milling district.

B. Investments Made

Crown Hydro has invested over \$5,000,000 to move the project forward. Recent activity, since moving to the Corps location, in preparation of the amended license, Crown Hydro has invested over \$1,500,000. At each instance of significant decision making or investment, Crown Hydro has reviewed the project budget and because the project has had the commitment from the RDF, the owners have made the decision to continue on with the project, as the going forward cost to complete has made sense.

Crown Hydro has concerns that ratepayer investment to date will be for not if the RDF funds are dropped and the project fails. Ratepayers have invested \$1,538,591 and legislators

have expressed concern that the RDF funds overall have not produced power or sufficient outcomes. These types of clean, difficult projects are exactly what the RDF was initially created for; to help bring them to market. Ratepayers will not put another dime into this project until permits are in hand and the project is assured completion. Crown Hydro is committed to seeing this project through and that the ratepayers' investment to date does not go to waste.

III. RDF PROJECTS RELATIVE TO CROWN HYDRO

Above, Crown Hydro demonstrated that it is diligently moving the project forward with reasonable expectation of success. It is also worth noting that Crown Hydro's project is consistent with RDF's intent at the time of award and as 116C.779¹⁰ has been revised. The benefits will be equal to or greater than other projects Xcel addressed in its initial comments.

With respect to cost or contribution to other renewable projects proposing to produce certain levels of electricity that were awarded grants and addressed in Xcel's filing on November 22, 2017, **Exhibit E**, Crown Hydro's would be the most efficient from a grant dollar per kilowatt of capacity installed perspective. The projects included in the filing have a grant cost ranging from \$1,654.18 to \$5,369.56 per kilowatt.¹¹ Crown Hydro's cost would be \$1,593.75 per kilowatt.¹²

¹⁰ 116C.779 subd 1(j), (k) and (o) continue to include provisions for renewable hydro projects that are cost-effective.

¹¹ See Xcel Initial Comments dated November 22, 2017, Attachment A

Name	kW	Grant	Grant per kW
Crown	3,200.0	5,100,000	1,593.75
IPS	967.0	1,850,000	1,913.13
MRES	1,000.0	2,661,320	2,661.32
Target	350.0	583,513	1,667.18
MPRB	200.0	969,741	4,848.71
Dragonfly	997.5	1,650,000	1,654.14
St P	103.5	555,750	5,369.57

¹² 3.4 MW total (two 1.7 MW generators), Annual Power Production: 20 - 22 million kWh

IV. MINNESOTA LAW AND INTENT

As articulated in Crown Hydro's initial comments, no action under *Minnesota Laws 2017, Chapter 94, Article 10, Section 3, Subd. 1(b)* is warranted and both protection of ratepayer investment to date, as well as the continued investment of Crown Hydro in reliance on the RDF grant and recent progress made on the project support a conclusion that no other action should be taken. First, as explained in response to Xcel's request, Crown Hydro has commenced construction and even if construction commencement had not taken place, Crown Hydro has no RDF funds RDF that have not been spent on the project. Crown Hydro agrees with Xcel and the Minnesota Department of Commerce with respect to this interpretation. If a determination otherwise is made, several other RDF grants would also need to be revoked to avoid inconsistent and arbitrary results.

While Crown Hydro has demonstrated that it has no unexpended funds to transfer, rendering the issue of commencement of construction moot, Crown Hydro does address commencement of construction herein. Crown Hydro's RDF Grant Agreement does not define construction as this legislation was not in place and such a determination was not contemplated. As previously explained, FERC took the position that Crown Hydro commenced construction as of 2007, and while this determination has cost Crown Hydro further investment (through payments to FERC), Crown Hydro did not dispute this determination.¹³ Furthermore, Crown Hydro has paid for the construction (at the time they were commenced) of turbines and generators to be used in the project. It should also be noted that these turbines were constructed only after being designed for this project-specific location, the specific drop and volumes were necessary in designing the turbines and generators before the construction of these key

¹³ Attached as **Exhibit E** is a FERC letter dated December 22, 2015 addressing the commencement of construction determination.

components was started. Purchase of such project-specific equipment is consistent with a determination of construction commencement for tax purposes, in addition to the FERC determination. Friends of the Lock and Dam (“FLD”) argue that other references in Minnesota law to commencement of construction should apply to this legislation. FLD’s arguments fall short in that it fails to recognize that the use of these definitions is limited to the specific purposes in which they are used, in Minn. Stat. §216C, subd. 6 (we understand this reference is intended to refer to Minn. Stat. §216C.06, subd. 6 which is limited in application to Minn. Stat. §§216C.05 to 216C.30 as set forth in Minn. Stat. §216C.06, subd. 1) and in Minn. Stat. §216E (Minn. Stat. §216E.01 likewise makes it clear that definition is limited application within that chapter, which is logical as in the permitting process is necessary to occur before a shovel is put in the ground). In addition to the references of support for a determination of commencement of construction identified by Crown Hydro above, the Commission regularly declares equipment costs as part of construction in determining Minnesota utilities are entitled to Construction Work in Progress, which is specifically addressed in Minn. Stat. §216B.16, subd. 6(a). Again, this is consistent with the appropriate interpretation of commencing construction.

FLD also suggests that the legislation intended to terminate Crown Hydro’s contract.¹⁴ This interpretation is inconsistent with the plain reading of the legislation that would merely requires Crown Hydro to “transfer any grant funds that were unexpended” with no mention or reference to grant termination.¹⁵ Termination is also inconsistent with other changes to Minn. Stat. §116C.779 subd. 1(b), which specifically addresses grant status “Funds awarded to grantees

¹⁴ Notably, Friends of the Lock and Dam (“FLD”), Comments dated November 22, 2017 at 6-11 propose an alternative interpretation to the legislation requiring termination of the grant in spite of no language proposing anything other than transfer of unexpended funds by the “recipient”. It is not possible for a recipient to transfer funds that it has not yet received, so a recipient can make no such transfer of the balance of grant funds not yet received.

¹⁵ See, generally, *Minnesota Laws 2017, Chapter 94, Article 10, Section 3, Subd. 29.*

in previous grant cycles that have not yet been expended ...are not subject to transfer under this paragraph” (emphasis added).¹⁶ Read together, the only interpretation of the legislation is that Section 29 applies only to funds that have been delivered to a grant recipient and are not yet spent, not future funds that are “not yet expended” and the legislation implies nothing about termination of a contract.

Finally, Crown Hydro’s project continues to have the support of the revised legislation included in Minn. Stat. §116C.779, subd. 1(j) and (k) which supports “development of renewable electric energy technologies,” including hydro.

V. CONCLUSION

Every resource has impacts that neighbors do not appreciate or interfere, whether a coal facility that causes dust on neighborhood homes, transmission lines running through backyards, noisy landscape altering windmills, or solar farms that cause trees to be cut down . While this project has its detractors, it is a good project with many benefits and should be allowed to move forward. The public policy and public concern has only increased with respect to emission-free sources of electricity since the award of Crown Hydro’s grant and ratepayers are increasingly demanding renewable options that are close to home. The project should continue to move forward.

Respectfully submitted,

s/ Richard Savelkoul

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¹⁶ See, generally, *Minnesota Laws 2017, Chapter 94, Article 10, Section 3, Subd. 1(b)*.