

State of Minnesota  
**Before the Public Utilities Commission**

Katie Sieben	Chair
Dan Lipschultz	Commissioner
Valerie Means	Commissioner
Matt Schuerger	Commissioner
John Tuma	Commissioner

In the Matter of Northern States Power Company's  
d.b.a. Xcel Energy Petition for Approval of the  
Acquisition of the Mankato Energy Center (MEC)

Docket No. IP6949, E002/PA-18-702

**Supplemental Comments of the Citizens Utility Board of Minnesota**

**I. Introduction and Overview**

The Citizens Utility Board of Minnesota ("CUB") appreciates the opportunity offered by the Public Utilities Commission ("PUC" or "Commission") to submit supplemental comments to this docket. CUB supports previous comments submitted by the Office of the Attorney General, the Department of Commerce, Sierra Club, the City of Minneapolis, Xcel Large Industrials, and the Institute for Self-Reliance that demonstrate the following:

- The Commission decision whether Xcel Energy ("Xcel" or "the Company") should purchase MEC should be made in conjunction with Xcel's Integrated Resource Plan filing in Docket No. E-002/RP-19-368;
- The Company's modeling conclusions regarding its proposed acquisition of MEC are incomplete and do not consider the entirety of resources available to protect the public interest and optimize future planning and investment;
- The Company has not met its burden of proof to demonstrate that it is reasonable to purchase MEC;
- The proposed purchase of MEC unreasonably shifts risks to ratepayers;
- The costs to purchase MEC are unreasonable and not in the public's interest;
- The Company has not properly considered the impact on ratepayers due to the potential for stranded assets, early retirement, or other significant future unknown costs; and
- The purchase of MEC is inconsistent with the policy goals of the State of Minnesota and the Commission.

In support of building the record around the core issues raised by the above parties, CUB offers supplemental comments focused on the following issues:

- The Commission has consistently ruled in favor of shifting risk away from ratepayers around the MEC resource block;

- The Commission has consistently decided against the Company owning assets in this resource block;
- The Company has a history of proposing ownership of this resource block based on an alleged resource need and withdrawing that need when alternatives are proposed;
- The Company routinely proposes asset ownership outside the resource planning processes, placing its shareholder interests over those of the public;
- The commitment to move toward a 100% carbon free system is significant, and the Commission should consider all available resources to meet this goal;
- Prudence should remain the priority in assessing MEC as a resource and whether MEC should become a utility-owned asset;
- The Company has been less than transparent with the Commission and stakeholders about its actions regarding its proposed acquisition of MEC;
- The Company has demonstrated an investment-heavy Integrated Resource Planning (IRP) strategy, of which MEC is a part;
- The Settlement Agreement in this docket explicitly links the proposed MEC acquisition with the IRP process;
- The Settlement Agreement expresses several parties' support for the Company's proposal, but it does not resolve any contested issues within this docket;
- The Settlement Agreement raises additional consumer protection and public interest concerns that create a further link between this docket and the IRP; and
- Approving Xcel's proposed acquisition of MEC would have a material influence on the Commission's decision making and the public interest within the IRP process.

## **II. Regulatory History of MEC and Commission Action on Associated Resource Block**

The regulatory history around acquisition of the MEC resource block is highly relevant to this docket. Past records and Commission decisions outline the caution the Commission has historically exercised regarding procurement of this system resource. Consistently throughout dockets, the Commission has disallowed Company ownership of this block in favor of resources that shift risk away from ratepayers. These decisions have primarily been based on uncertainty around Xcel's actual resource need, inconsistency in Company modeling, the inability for parties to replicate the Company's conclusions, and the availability of cheaper proposed solutions. Since 2010, as detailed below, the Commission has taken cautious and deliberate steps to mitigate exposure for ratepayers and countered Company approaches that locked in long-term commitments. The Commission has also been measured in its approach and avoided short-term actions that amplify long-term risk. The following review outlines how the Commission has expressed these public interest protections throughout this resource's history.

On August 2, 2010, Xcel submitted to the Commission its 2010 Resource Plan, covering the time period from 2011 to 2025 in Docket No. E002/RP-10-825. Among several identified elements, the Company proposed to replace 270 MW of coal fired generation capacity at its Black Dog facility with 680 MW of combined cycle natural gas generation.<sup>1</sup> The Company identified costs and benefits of repowering Black Dog units 3 and 4 with natural gas to significantly improve reliability and environmental performance of the units, and at “a reasonable cost to consumers.”<sup>2</sup> In the Resource Plan, the Company identified that, due to economic and policy circumstances, the plan was submitted in an atmosphere of considerable uncertainty.<sup>3</sup> The country was recovering from a recession, load forecasts were challenging due to changing customer behaviors, and environmental policy developments began to focus more intently on the costs of carbon. The Company, however, responded to the Commission that it was in a good place to react to the challenges. In addition, the Company saw opportunity, as natural gas production forecasts were increasing, and prices were decreasing. As such, its repower strategy, as proposed, offered a pathway to serve the public interest. The Company proposed to own the newly proposed combined cycle infrastructure and add it to its rate base. The plan identified a near-term need for capacity and proposed that, based on the Company’s modeling, the Black Dog Repower project was the best way to address the capacity shortfall.

Toward the end of 2010 and through early 2011, parties initiated information gathering requests informing the record on this proposal. Concurrently, on March 15, 2011, the Company filed a petition for Certificate of Need for Repowering the Black Dog Generating Plant.<sup>4</sup> In this petition, the Company proposed replacing coal-fired generation on Units 3 and 4 with combined cycle, natural-gas fired generation (approximately 700 MW) as proposed in its IRP. The Company offered the plant as the most cost-effective way to meet customers’ needs, modernize the fleet, improve safety, upgrade system environmental performance, and repurpose an existing generation site.<sup>5</sup> The Company’s analysis estimated that the capital cost for the facility would be approximately \$600 million (\$857/kW). This petition also reported changing energy forecasts from those reported by the Company in its initial Resource Plan filing. This application was deemed substantially complete, after being supplemented, by the Commission on May 25, 2011.<sup>6</sup> The application acknowledged the need for updated forecasting, as well as expressed concern that alternative providers may not have sufficient time to prepare their proposals.<sup>7</sup> From the initial filing, concerns were raised related to the accuracy of Xcel’s forecasting. On May 26, 2011, the Company filed Notice of Applications for competitive resource acquisition.<sup>8</sup> On June 22, 2011,

---

<sup>1</sup> Initial Filing of Xcel Energy. Docket No. E002/RP-10-825. 6-1.

<sup>2</sup> *Ibid.*

<sup>3</sup> Initial Filing of Xcel Energy. Docket No. E002/RP-10-825. Executive Summary.

<sup>4</sup> Petition to The Minnesota Public Utilities Commission for a Certificate of Need for the Black Dog Generating Plant Repowering Project. Docket No. E-002/CN-11-184.

<sup>5</sup> Petition to The Minnesota Public Utilities Commission for a Certificate of Need for the Black Dog Generating Plant Repowering Project. Docket No. E-002/CN-11-184. 1-1 – 1-3.

<sup>6</sup> Commission Order. Docket No. E-002/CN-11-184. May 25, 2011.

<sup>7</sup> *Ibid.* p. 4.

<sup>8</sup> Notice of Application for a Certificate of Need, and Initiating a Resource Acquisition Process, Xcel Energy. Docket,

that application was deemed complete by the Commission, and notice of comment periods on the merits of the project, and on issues of fact with representations made in the application.<sup>9</sup>

On July 22, 2011, Calpine Corporation ("Calpine"), through its affiliate Mankato Energy Center, LLC, filed with the Commission an Alternative Proposal to the Company's proposed plan for Repowering of Black Dog Units 3 and 4.<sup>10</sup> In its proposal, Calpine offered the expansion of its already existing Mankato Energy Center, a 375 MW natural gas-fired combined-cycle generating facility, under a long-term PPA with the Company, and construction of an additional 345 MW in a more cost-effective manner than was proposed at Black Dog. Calpine argued that the proposal by the Company would overbuild capacity at Black Dog and was not in the public interest. It argued that its alternative was a better fit in terms of replacing coal-fired capacity and was stronger on the merits of regulatory criteria within the docket. Significant to Calpine's argument was the relationship of the project to the Company's cost of capital, debt to equity ratio, and rate base regulation requirements. Further, Calpine emphasized the benefit to the public interest in having it, and its shareholders, bear the substantial risk of cost and performance of the plants, rather than ratepayers.<sup>11</sup>

Because of the submittal of an alternative proposal by Calpine, on July 25, 2011, the Commission canceled the Notice of Comment Period previously ordered and initiated the required use of a contested case proceeding to evaluate the merits of both projects.<sup>12</sup> On August 19, 2011, the Commission referred the matter to the Office of Administrative Hearings ("OAH") for a contested case proceeding: OAH Docket No. 7-2500-22228-2. The issue to be addressed was which proposal was "the most reasonable and prudent, considering the applicable statutory requirements; and, whether a more reasonable and prudent alternative to the proposals has not been demonstrated by preponderance of the evidence on the record."<sup>13</sup>

On October 7, 2011, the Company filed a Request for Extension to its Resource Plan due to changes in significant elements of its five year and long-range plans.<sup>14</sup> This request also confirmed that the Company saw the need to update its energy forecasts. As such, the Company proposed to provide a comprehensive update to its resource plan. On October 10, 2011, the Commission issued notice granting an extension to the Company until December 1, 2011. Concurrently, the Company filed a letter on October 10, 2011 to the administrative law judge in Docket No. E-002/CN-11-184 (the Black Dog Repowering docket), asking for similar extension of timelines to accommodate new analysis. Of note, the Company referenced its need to review the timing and need for the Black Dog Repowering Project.<sup>15</sup> This extension request is noteworthy because it

---

No. E-002/CN-11-184. May 26, 2011.

<sup>9</sup> Notice of Comment Periods. Docket No. E-002/CN-11-184. June 22, 2011.

<sup>10</sup> Calpine Corporation Alternative Proposal. Docket No. E-002/CN-11-184.

<sup>11</sup> *Ibid.* p. 11.

<sup>12</sup> Notice of Comment Periods on Merits Cancelled. Docket No. E-002/CN-11-184. July 25, 2011.

<sup>13</sup> Commission Order. Docket No. E-002/CN-11-184. August 19, 2011. P. 2-3.

<sup>14</sup> Request for Extension by Xcel Energy. Docket No. E-002/RP-10-825. October 7, 2011.

<sup>15</sup> Letter to ALJ. OAH Docket No. 7-2500-22228-2. October 10, 2011.

demonstrated that the Company decided to review the need for this resource block only after alternative proposals were being considered by the Commission.

On December 1, 2011, the Company filed its updated IRP with the Commission.<sup>16</sup> In the plan, the Company concluded that new forecasts and refreshed analysis demonstrated that the Black Dog generating resource was no longer needed. The Company described that their "...customers' needs are not materializing in a manner as we originally believed because the economy continues to grow slowly."<sup>17</sup> As such, the Company felt that though the Black Dog project was still viable based on its modeling in out-years, it did not believe it's out-year modeling was as reliable "...because long-term assumptions are subject to greater uncertainty."<sup>18</sup> The plan specifically called out the lack of current capacity deficit, but stated that the Company might see a need as early as 2018.<sup>19</sup> Black Dog Repowering was still viewed by the Company as a best alternative in the mid- and long-term.

On December 7, 2011, the Company filed a motion to withdraw its application to the Commission to repower Black Dog and the associated request for certification.<sup>20</sup> Similar to its resource plan filing, the Company stated that it could no longer support the proposal based on a change in the underlying need for new capacity. This motion was opposed by both Calpine, and the Department of Commerce ("Department"). The Department opposed withdrawal in order to conduct analysis relative to forecasting future demand for energy on which the Company was basing its motion. Calpine maintained its opposition to the withdrawal motion, maintaining that demand for the resource was still present and that its alternative application presented the best option to serve the public interest.<sup>21</sup> Calpine stated that the modeling conducted by the Department and the Company produced materially different results despite the analysis being based on the same forecasts. Calpine argued that the process and Commission should not be held to the whims of short-term forecasting done by the Company, and instead should be focused on planning that sets the state's resources on an optimal path. In particular, Calpine argued that the Commission should be able to consider options beyond Xcel's self-build proposals.<sup>22</sup> Calpine also expressed concern that the Company was creating modeling results that demonstrated need for resources only when the Company saw an ownership opportunity. Calpine proposed when consideration of resource alternatives was on the table for the Commission, Xcel's capacity need changed.

On April 2, 2012, the Company filed a Notice of Changed Circumstances and Petition Related to Prairie Island Extended Power Uprate in its IRP, Docket No. E-002/RP-10-825. This filing, which was based on similar forecasting to the Company's forecasting in Docket No. E-002/CN-11-184, placed on hold the Company's uprate effort at Prairie Island. Once again, the Company argued that there was too much uncertainty in the system to proceed with large resource decisions at this

---

<sup>16</sup> Resource Plan Update. Docket No. E-002/RP-10-825.

<sup>17</sup> *Ibid.* p. 36.

<sup>18</sup> *Ibid.* p. 38.

<sup>19</sup> *Ibid.* p. 36.

<sup>20</sup> Motion to Withdraw Application for Certification of Need. Docket. NO. E-002/CN-11-184. December 7, 2011.

<sup>21</sup> Reply Comments of Calpine. OAH Docket No. 7-2500-22228-2. March 23, 2012.

<sup>22</sup> *Ibid.*

point. The Company reached an inflection point in which thought it most appropriate for issues like Black Dog; Prairie Island; and the size, type and timing of additional resource additions should be considered in a larger proceeding that could, "restructure and clarify goals of the proceeding to better address all factors that may impact this and other generation resource decisions."<sup>23</sup> The ALJ agreed with the position of the Company and chose to grant its motion to withdraw its application. The Commission subsequently opened a comment period on the order to allow withdrawal, heard oral argument on the request to withdraw and the Company's 2011-2025 Resource Plan (E-002/RP-10-825), and met to deliberate.

The Commission found that the multiple dockets referenced above were closely and materially interrelated and that sufficient unknowns existed as to make it imprudent to act under the existing record.<sup>24</sup> As such, the Commission found that it could not act on the Company's Resource Plan, nor could it act on resource acquisition under Docket No. E-002/CN-11-184. Instead, the Commission closed Docket No. E-002/CN-11-184, opened a new Docket, E-002/CN-12-1240 to address resource needs identified in Docket No. E-002/RP-10-825 and plan for a competitive resource acquisition, and initiated a new IRP process.<sup>25</sup> Uncertainty around need became the primary reason for the Commission to halt these multiple dockets, reset, and consider how it moved forward in a new resource plan docket. In its actions, the Commission was responding to considerable uncertainty as to the veracity of the Company's modeling, uncertainty in the Company's resource need, and the Company's changing position on the resource block, depending on its ownership position. It acted to both address what appeared to be an immediate need for resource acquisition raised by the Department and Calpine, but also affirmed the primacy of the resource planning process. It recognized the centrality of the resource plan in statute and the duty of the Company to act within the resource plan as a framework. It found that a standalone resource acquisition had a material influence on resource planning. As such, in circumstances in which the evidence presented by the Company for such action was not of the highest certainty, it was better to evaluate acquisition decisions in a broader context. Further, the Commission recognized that the record was not sufficient to meet this certainty standard and thought it was better to take a broader look. The Commission focused on adopting a more comprehensive approach particularly when acting on resource decisions in which the Company was proposing resource ownership.

#### E-002/RP-10-825 continued, E-002/CN-12-1240

The Commission Order of November 21, 2012 opened a process to address the resource needs to be identified in Docket No. E-002/RP-10-825, recognizing that the record on resource needed to be constructed and expanded and also to establish a parallel process on a competitive resource acquisition process to be used if, the resource planning docket determine a need for immediate capacity resources. Further, in its November 30, 2012 order, the Commission directed Xcel to solidify projected resource need and finalize the resource plan process. This process proceeded,

---

<sup>23</sup> Order Granting Motion to Withdraw and Order to Certify. OAH Docket No. 7-2500-22228-2. May 30, 2012.

<sup>24</sup> Commission Order. Docket No. E-002/CN-11-184. November 21, 2012.

<sup>25</sup> Commission Order. Docket No. E-002/CN-11-184. November 21, 2012 and Commission Order. Docket No. E-002/RP-10-825. November 30, 2012.

and on March 5, 2013, the Commission issued an Order approving the Company's plan, establishing filing requirements and closing Docket No. E-002/RP-10-825.<sup>26</sup> Within this order, the Commission found that the Company had a need for an additional 150 MW in 2017, increasing up to 500 MW in 2019. This decision effectively resolved resource issues that had been ongoing in the above-referenced dockets since 2010. The Commission found the Company's analysis and projections of capacity needs were incorrect and affirmed the positions of the other parties in the docket.

Also, on March 5, 2013, the Commission established a process and a procedural framework for moving forward with the competitive bid process. It established a bidding deadline of April 15, 2013.<sup>27</sup> On that date, the Company once again submitted a petition for approval of a competitive resource acquisition and certificate of need relative to Docket No. E-002/CN-12-1240.<sup>28</sup> This petition proposed to construct three 215 MW combustion turbine generators to be in service by 2019, one of which was proposed again at the Black Dog facility. Proposals were also offered by Calpine, Geronimo Energy, LLC, Great River Energy, and Intergy Thermal Development, LLC. These resources ranged from intermediate and peaking gas capacity, solar photovoltaic capacity, and resource credits, through both new and existing capacity. The Commission then ordered the matter referred to the OAH. The record once again demonstrated considerable disagreement amongst parties around Xcel's need and the appropriate resource acquisition to meet need. Additionally, the Company once again filed a Notice of Changed Circumstances to add an additional 750 MW of wind resource to its 2010-2025 Resource Plan.<sup>29</sup> On December 31, 2013, the assigned ALJ issued his report.<sup>30</sup> The Commission found that the ALJ had concluded that the record did not support the need for a large resource acquisition and had subsequently recommended selecting scalable projects to meet near-term need, and address later resource needs in future resource acquisition processes. The Commission stated that even findings of much greater need in 2019 would not justify making larger acquisition in Docket No. E-002/CN-12-1240.<sup>31</sup> The Commission agreed with the ALJ that uncertainty makes errors more likely and uncertainty in the record was highly material in making resource commitments.<sup>32</sup> The Commission proceeded with a cautionary approach to moving forward with resource acquisition, and gas acquisition in particular. By February of 2015, the Commission had solidified its stance around flexibility of resources in uncertain times, reaffirming its May 2014 Order.<sup>33</sup> The result was a power purchase agreement with Calpine at MEC. In its May 2014 and February 2015 Orders, the Commission commented, in finding the terms of power purchase favorable, that it would be likely to find it unreasonable to enter into any other agreement in which the terms shifted risk, or

---

<sup>26</sup> Commission Order. E-002/RP-10-825. March 5, 2013.

<sup>27</sup> Commission Order. E-002/CN-12-1240. March 5, 2013.

<sup>28</sup> Petition to the Minnesota Public Utilities Commission Seeking Approval for a Competitive Resource Acquisition Proposal and for a Certificate of Need. Docket NO. E-002/CN-12-1240.

<sup>29</sup> Notice of Changed Circumstances Proposal to Add 750 MW of Wind Resources. Docket NO. E-002/CN-12-1240 and E-002/RP-10-825.

<sup>30</sup> Finding of Fact, Conclusions of Law and Recommendation. Docket No. E-002/CN-12-1240. December 31, 2013.

<sup>31</sup> Commission Order. E-002/CN-12-1240. May 23, 2014.

<sup>32</sup> *Ibid.* p. 26.

<sup>33</sup> Commission Order. E-002/CN-12-1240. February 5, 2015.

unknown costs to ratepayers.<sup>34</sup> The Commission found that the MEC PPA provided the best combination of flexibility and cost, while maintaining reliability and access.<sup>35</sup> The Commission found that decisions based on anything other than this framework would need to be decided within the context of a future IRP.

#### Resource Block Determination and Deliberate Caution

As the long record demonstrates, the final arrival of a PPA for electricity at MEC was based on uncertainty around capacity need, resource mix, and customer impacts, as well as skepticism around Company ownership, and lack of long-term vision from the Company. In rejecting Company ownership of gas generation in this resource block, the Commission has repeatedly been deliberate in expressing its desire for how this resource should be considered and treated. The Commission has repeatedly made decisions that did not lock the Company, or customers, into longer-term commitments. Specifically, the Commission intended that ratepayers should not shoulder the risk around this resource block and felt that Company ownership worked against this objective. In both its May 2014 and February 2015 Orders, the Commission went out of its way to express its deliberate desire for the MEC resource block to remain as a power purchase agreement. It preferred that ratepayers not bear any additional risk around this resource block. The Commission consistently rejected the prospect of Company ownership of the resource, it deemed competitive solicitation as the preferable method in of acquisition for the public interest, preferred to make these decisions within the scope of an IRP, and attempted to avoid long-term commitments whenever uncertainty weighed heavily. The MEC resource block in its current status as a PPA is a deliberate risk hedge to protect ratepayers.

This chain of orders demonstrates prudent decision making by the Commission. Because of these orders, customers likely were spared negative impacts due to uncertainty and long-term commitment. Moreover, as discussed below, the Company's Colorado-based operating company, Public Service Company of Colorado has also engaged in resource acquisition activity outside resource planning processes, that has not optimized the public interest.

#### Rush Creek Wind Project, Colorado

On May 13, 2016 Public Service Company of Colorado ("PSCo") filed an application with the Colorado Public Utilities Commission ("COPUC") initiating the Rush Creek Certificate of Public Convenience and Necessity: Proceeding No. 16A-0117E. This application asked the COPUC for approval to develop, own and operate a 600 MW wind project, as well as associated transmission. In its petition, PSCo asked the COPUC for expedited consideration. This petition included a request to the COPUC to waive certain Electricity Resource Planning (ERP) rules and practices that would have ordinarily required the request to be considered within the competitive resource planning process.<sup>36</sup> Largely, PSCo's rationale for this request was that the ERP process, to be filed on May 27, 2016 (Proceeding No. 16A-0396E), was too lengthy for PSCo to take advantage of

---

<sup>34</sup> *Ibid.* p. 20.

<sup>35</sup> *Ibid.* p. 21.

<sup>36</sup> CO PUC Commission Interim Decision. Decision No. C16-0548-I. June 15, 2016. Paragraph 67-81.



immediate opportunities which it believed could save ratepayers money. The COPUC approved the request to sever its consideration of the resource acquisition of Rush Creek from the competitive ERP.

The record and submitted testimony from parties demonstrated considerable uncertainty in the decision-making environment and identified a series of unknowns that had material influence on resource decision making. Within this proceeding, PSCo negotiated settlement with parties to support its acquisition of the resource. The settlement overcame party comments on uncertainty but did not resolve the fundamental information deficit entered into the record. The COPUC approved the application on September 30, 2016.<sup>37</sup> The Settlement agreed to the reasonableness of a levelized cost for development at \$29/MWh. In its approval, the Commission noted, "...it is likely that Rush Creek would be lower or comparable with prices in any bid solicitation in the near future."<sup>38</sup> However, the COPUC noted there has been a high level of uncertainty around the resource costs, and that this uncertainty is expected to continue into the future. Also, the COPUC noted that it would have preferred to review the proposal as part of the ERP, consistent with its longstanding policy to review the acquisition on utility resources exclusively in the context of an ERP.<sup>39</sup> This statement would soon prove important for the public interest.

As part of its resource planning process, Colorado requires a competitive solicitation process for resources that are identified as needed in the ERP process. As required in the acquisition phase of PSCo's ERP in COPUC Proceeding No. 16A-0396E, an all-source solicitation was issued, and PSCo reported to the COPUC on the results on December 28, 2017.<sup>40</sup> In its 30-Day Report, PSCo reported responses by technology. In this report, the PSCo relayed its findings for standalone wind. Through solicitation, PSCo received a Median Bid Price or Equivalent for standalone wind of \$18.10/MWh: \$10.90/MWh cheaper than the settled development cost of Rush Creek. The agreed settlement decision met stakeholder needs at the time but ultimately proved not to maximize benefits for customers. Stakeholders' and the COPUC's decision to proceed on the Rush Creek wind farm in a highly uncertain environment ultimately cost ratepayers. Given policy pressures, Rush Creek demonstrates that in uncertain and rapidly changing environments, even consensus between parties and Commission review can lock in long-term challenges to the public interest.

The Rush Creek acquisition is both illustrative of the ramifications of locking in large and long-term resource acquisition in the current environment, and it demonstrates the need for extreme caution when relying on Company cost projections, given its propensity to take steps outside of normal commission processes when asset ownership is in play. This is exemplified by a history of pulling back on its forecasts for need for resources when third-party ownership is the leading approach. It also demonstrates that the Company strategy is often to ask the Commission to

---

<sup>37</sup> CO PUC Commission Decision. Decision No. C16-0958. September 30, 2016. Paragraph 40.

<sup>38</sup> *Ibid.* Paragraph 40.

<sup>39</sup> *Ibid.* Paragraph 48.

<sup>40</sup> 2016 Electric Resource Plan: 2017 All Source Solicitation 30-Day Report. COPUC Proceeding No. 16A-0396E.

consider acquisition of resources on a standalone basis, because uncertainty works in their advantage, though not necessarily in the public's interest.

Circumstances around uncertainty have changed and evolved since 2010. The recession and changing environmental policy in 2010 gave pause to the Commission. The Commission deliberately chose to be measured and cautious in its approach to the MEC resource block. The Commission continued to adopt this approach through the 2015 IRP. Uncertainty beyond normal regulatory parameters persist. In particular, the Commission is in the process of undertaking the Company's IRP filing. This filing creates major uncertainty related to resource direction, mix, and approach. The Company's 100% carbon free announcement creates an environment in which the Commission's cautious foresight is more appropriate than ever. Approving the purchase of MEC without consideration of the Company's resource plan in its entirety counters the decade long approach the Commission has adopted toward MEC.

### **III. Significance of 100% Carbon Free**

The filing of the Company's IRP is an inflection point. Because this is the first resource plan, both in the state and nationally, in which an investor-owned utility is voluntarily offering a pathway to 100% decarbonization, it represents a significant place in the resource plan continuum. The resource mix selected in the upcoming plan will set the foundation for moving forward toward 100% decarbonization. This decarbonization decision is so significant that it sets this resource plan apart from past resource plans. As such, it is important the Commission maintains the utmost flexibility and consider all the relevant resource combinations available to the Company. The history of Commission's prudence regarding MEC is an important context to consider. Past decisions of the Commission on the MEC resource block were cautious in their approach to locking in ownership for the Company and risks associated with this resource for ratepayers. When looked at under the lens of the 100% carbon-free commitment, a cautious approach seems even more appropriate and important to maintain. The 100% carbon-free commitment creates one of the most uncertain environments on the utility landscape. Deciding on the proposed MEC acquisition separate of the IRP, would tie the Commission's hands and limit its ability to make the best-informed resource decisions to move decarbonization forward. It also limits the Commission's scope of review for determining how the public interest is best served in the IRP. The significance of 100% decarbonization calls for extra review as the Commission moves forward. Because the decision on MEC materially influences the construction of the 2019 IRP, the public interest is best served by considering all options available in a holistic manner, with all competitive proposals on the table at the same time.

#### Prudence Over Policy

CUB and many of the parties that have submitted comments to this docket fully support the Company's move toward a 100% carbon free system. Within CUB's support is a position that the Commission, the Company, and other parties should avoid placing decarbonization policy above the need for a prudent review of resources. The goal of speedy decarbonization cannot supersede the need to conduct a thorough review of proposals in the most comprehensive way possible.

Additionally, the timelines of Southern Company also do not supersede the need for a prudent and comprehensive review of resources. MEC should be considered in the suite of resources available to the Commission for consideration under this type of approach. It is entirely possible that zero carbon resources will prevail that are less costly, reliable and can be used to integrate more low-cost renewable energy. Indeed, Xcel is acquiring 275 MW of solar plus storage in Colorado as a result of its 2017 RFP.<sup>41</sup> The Commission should have the ability to comprehensively assess energy and capacity needs of the system with a combination that is not limited to this one acquisition, but also with a combination of renewable resources, energy storage, demand-side options, other existing resources, and other alternatives. Comments by Sierra Club, the City of Minneapolis, the OAG, Xcel Large Industrials, and the Institute for Local Self-Reliance also state this position. Keeping prudence primary to policy goals, party timelines, and other pressures ensures that the public interest is met, not only in this docket but also in the resource plan implementing the 100% approach.

### Transparency

The significance of the 100% carbon-free announcement means that there is considerable interest and investment from stakeholders and the general public on the success of its implementation. With the public investment, there is also an expectation that the Company operate in a transparent and engaged way. While these standards should always apply in resource planning processes and other Company filings, the significance of the 100% approach increases the expectation from stakeholders and the public.

It is CUB's position that the Company has been less than transparent in its MEC proposal. In respect to its 100% carbon-free announcement and on-going IRP work, stakeholder processes, and interactions with the Commission, the Company was surprisingly silent on its filing proposing to acquire MEC. The Company held IRP stakeholder meetings on October 22, 23, and December 14, 2018. The Company also presented an extension request for the 2019 IRP filing to the Commission in a hearing on December 6, 2018. Prior to the Commission's approval of this request to extend the IRP, the Company made no mention to stakeholders, nor the Commission, that it had intended to purchase MEC and planned to do so outside of the IRP process.<sup>42</sup> Had the Company mentioned this intention to stakeholders, it is likely that several parties would have raised objections to the Company's plan to delay the filing of its IRP.

The Company has stated that it was under confidentiality constraints until November 5, 2018.<sup>43</sup> While this limited its ability to inform stakeholders, the confidentiality provision was not in place at the time of the December 6, 2018 extension hearing, and the Company could have informed the Commission of its intent, as this information was relevant to the IRP proceeding. The Company's silence on the issue denied the Commission the opportunity to examine the concerns of parties regarding the proposal. In its Request for Extension, the Company explicitly stated that

---

<sup>41</sup>CO PUC Commission Decision. Decision No. C16-0958. September 30, 2016.

<sup>42</sup> CUB Information Request No. 11. Docket No. E-002/PA-18-702. Request for Extension 2020-2034 Upper Midwest Integrated Resource Plan. Docket No. E-002/RP-15-21.

<sup>43</sup> CUB Information Request No. 11. Docket No. E-002/PA-18-702.

it will not have, "...any actions necessary in our five-year action plan."<sup>44</sup> This statement obscured a significant action with material influence on the IRP – namely, the proposed acquisition of MEC. Commission staff countered in the December 6, 2018 briefing papers that the Company did in fact have significant "action" to undertake in the five-year action period.<sup>45</sup> The Commission discussed this topic and agreed with staff's perspective. Again, at this time, the Company did not raise the issue that it had filed to acquire an asset that was a relevant "action" within the IRP process. This strikes CUB as a significant omission to the record and relevant to considering how transparent the Company has been in informing early decision making in the resource planning process.

The Commission was informed by the Company that, due to lack of significant action, delaying the plan filing in order to work with stakeholders would present no harm or conflict to the process. It now appears that potential harm exists, and there is considerable conflict between the Company and parties around process. The Company stated that the remaining work to be done in the IRP process was focused developing on a better understanding of the Company's energy efficiency potential, expanding E3 modeling, and a focus on building out information on community transition. The Company outlined that the extension could be useful in working with stakeholders to further understanding of their plans, reach consensus and build a broader platform for strategy exploration.<sup>46</sup> Comments provided by Center for Energy and Environment ("CEE") also demonstrate that the Company was informing stakeholders that no significant resource actions were in the near term. Specifically, CEE stated, "Given that Xcel Energy needs no additional resource approvals in the near term... we encourage the Commission to grant Xcel Energy's request."<sup>47</sup> CUB respectfully disagrees that the Company was not taking significant action during the delay and believes that other parties were also not aware of the action by the Company to acquire MEC.

The acquisition of MEC is a material and significant action and should have been presented to the Commission, if for no reason other than due diligence. Further, several of the Company's proposed reasons for delay have yet to come to fruition. To date, the Host Community Study has not been added to the record, and the E3 modeling has played little to no role in the filed IRP.

#### Capital Bias/Resource Planning Strategy

The significance of Xcel's 100% carbon-free strategy and the investment by the public in its implementation is highly relevant to the Commission's decision on Xcel's proposed MEC acquisition. As laid out above, the Company has a long history of attempting to own the MEC resource block. The Rush Creek example from Colorado demonstrates a Companywide strategy to maximize ownership at price premiums when possible. The Company has proposed a resource strategy within the IRP docket that also leans on resource ownership and building significant rate base. In addition to the acquisition of MEC, the settlement presented by the parties in this docket

---

<sup>44</sup> Request for Extension 2020-2034 Upper Midwest Integrated Resource Plan. Docket No. E-002/RP-15-21. p. 1.

<sup>45</sup> Staff Briefing Papers. Docket No. E-002/RP-15-21. December 6, 2018. p. 17-19.

<sup>46</sup> *Ibid.* p. 4.

<sup>47</sup> Comments of Center for Energy and Environment. Docket No. E-002/RP-15-21. p. 2.

outlines a path for the Company to convert retired coal generation to regulatory assets and proposes company ownership of new solar generation, conversion of 1,200 MW of wind resources from PPA, the addition of 1,700 MW of firm peaking resources, and significant alteration of the competitive procurement process to favor Company ownership.<sup>48</sup> This plan is consistent with the Company's presentations to shareholders and financial analysts that it sees opportunities for territory-wide investments of \$20-30 billion dollars into the future.<sup>49</sup> Given the Company is embarking on a huge capital investment strategy centered on the proposed IRP, it seems prudent that any acquisition of resources be considered amongst a suite of options to maximize ratepayer benefits.

#### **IV. MEC/IRP Settlement**

On May 20, 2019, the Company, Clean Grid Alliance, Fresh Energy, Minnesota Center for Environmental Advocacy, Union of Concerned Scientists, Sierra Club, CEE, and Laborers District Council of Minnesota and North Dakota submitted a settlement agreement to the Commission titled, MEC/IRP Settlement Agreement. In this agreement, the parties agreed to support Company acquisition of MEC and to terms in the Company's 2019 IRP, which at the time had not been filed. These terms range from the early retirement and cost recovery of Company coal generation assets, to acquisition of solar resources, to Company asset ownership, and terms for competitive resource acquisition processes.<sup>50</sup> The agreement garners support from interested parties whose policy efforts are focused on coal asset closure, large-scale renewable energy development, and employment associated with labor agreements with the Company. Within the settlement agreement, the parties solely agree to support the acquisition of MEC within this docket, while settling only terms in the cross-referenced resource plan docket.

In both its initial comments and its reply comments, the Company has consistently asserted that this acquisition is independent of the upcoming resource plan and should be considered outside of its context.<sup>51</sup> The agreement contradicts these assertions by its very terms. The settlement did not resolve any consumer protection or, public interest issues within this docket. Broadly, the agreement garners support for the acquisition of MEC without resolving any issues in question. This point can be illustrated by the fact that the agreement did not even resolve the issues raised in initial comments by settling party Sierra Club.<sup>52</sup> The agreements lack of resolution on docket issues appears to be rent seeking by the parties. This rent seeking is detrimental to this docket, as it obscures issues of fact. Important to note, the agreement is non-unanimous. The settling parties agreed to support the acquisition of MEC without independent modeling, without seeing the Company's preferred IRP plan, and without consultation of the larger stakeholder group within this docket. The supporting parties added no new information or analysis to the record. The

---

<sup>48</sup> MEC/ IRP Settlement Agreement. Docket No. E-002/PA-18-702.

<sup>49</sup> Bank of America/ Merrill Lynch Xcel Futures Analysis. December 19, 2018. and Xcel Midwest Investor Presentation *Sustainable Long Term Growth*. June 19, 2019.

<sup>50</sup> MEC/ IRP Settlement Agreement. Docket No. E-002/PA-18-702.

<sup>51</sup> Reply Comments of Xcel Energy. Docket No. E-002/PA-18-702. p. 4-5.

<sup>52</sup> Sierra Club Initial Comments In the Matter of Xcel Energy's Petition for Approval of the Acquisition of the Mankato Energy Center (MEC). Docket No. E-002/PA-18-702.

supporting parties' comments are solely based on testimony from the Company and do not materially expand the record. Given the lack of resolution on several issues raised by opposing parties within this docket, the settlement agreement should be viewed as similar to a letter of support from the parties for the Company's bid and not as a full or appropriate resolution to the issues of this docket.

Additionally, the agreement creates several new consumer protection concerns for CUB and reinforces the argument several parties in this docket have raised: namely, that the proposed MEC acquisition is materially tied to the IRP.<sup>53</sup> The terms of the agreement and even its title inextricably tie the two dockets together. This contradicts the ongoing assertion by the Company and the supporting parties that MEC is an existing standalone resource.<sup>54</sup> In constructing terms of the agreement, the Company and parties have conceded that the two dockets are linked and articulate as much in their supporting comments.<sup>55</sup> The parties argue that the acquisition of MEC will facilitate both the closure of coal assets and prevent the need for future gas assets. These other actions would take place within the IRP process.

The link between the dockets could not be articulated more strongly. It is important, given how the Company and the settling parties have agreed to cross-docket terms, that the full scope of the effects should be evaluated by the Commission. CUB asks the Commission to consider that not only does the agreement create cross-docket resource links, but it also links consumer protection and public interest concerns in a way that were not present before the submission of the agreement.

The primary consumer protection issues raised by parties in opposition the acquisition of MEC center around value and costs, potential for stranded costs/assets, early retirements, and unknown future costs. The settlement has not resolved any of these concerns. In fact, settling parties submitted comments in support of the Company largely based on a focus on decarbonization.<sup>56</sup> While relevant, decarbonization has not been raised as a primary concern by opposition parties in this docket. CUB proposes to the Commission that the issues in this docket are primarily focused on financial due diligence to protect consumers. Given that this settlement is focused on a non-primary issue, the Commission should weight the agreements as such.

Further, the agreement as submitted creates cross-cutting consumer concerns in the IRP docket. In attempting to negotiate favorable terms for carbon reduction in the IRP, parties have agreed to support the Company's regulatory asset treatment of retiring coal generation, non-competitive bid of solar assets, and supporting Company preferential resource acquisition. Each of these agreed on terms raise issues of financial concern for ratepayers. As outlined above, the capital

---

<sup>53</sup> Xcel Energy's 2020-2034 Upper Midwest Integrated Resource Plan. Docket No. E-002/RP-19-368. Chapter 2. P 21

<sup>54</sup> Petition for the approval of the Acquisition of the Mankato Energy Center (MEC). Docket No. E-002/PA-18-702. p. 4-5. Reply Comments. Acquisition of the Mankato Energy Center (MEC). Docket No. E-002/PA-18-702. p. 4-5.

<sup>55</sup> Comments of Clean Grid Alliance, Fresh Energy, Minnesota Center for Environmental Advocacy, the Union of Concerned Scientists, and Center for Energy and Environment. Docket No. E-002/PA-18-702.

<sup>56</sup> *Ibid.*

strategy for the Company is heavily invested in ownership, the agreement lays the foundation for that strategy without review by other concerned parties and the Commission.

## **V. Recommendations and Conclusion**

CUB again thanks the Commission for consideration of our comments. CUB believes the record as presented by parties in the docket clearly demonstrates the following conclusions:

- The decision to purchase MEC is materially relevant to the IRP and should be considered within that docket;
- The Company has not met the burden of proof that it is prudent and in the public interest to purchase MEC;
- The proposed purchase of MEC would unfairly shift risk to ratepayers, contrary to Commission precedent;
- Considerable uncertainty exists around current resource decisions and therefore the public interest is not served in approving a long-term investment;
- The Settlement Agreement between the Company and parties has not addressed public interest and prudence concerns nor materially changed the record; and
- The Settlement Agreement supporting the purchase of MEC raises new consumer interest issues in the IRP.

Therefore, CUB requests the Commission deny the Company's Application to purchase MEC.

Respectfully submitted,

July 26, 2019

/s/ Joseph Pereira

Joseph Pereira

Regulatory Director, Citizens Utility Board of Minnesota

332 Minnesota St., Suite W1360

St. Paul, MN 55101

651-300-4701, ext. 6

[josephp@cubminnesota.org](mailto:josephp@cubminnesota.org)