

August 29, 2019

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

RE: **Comments of the Minnesota Department of Commerce, Division of Energy Resources**
Docket No. IP6949, E002/PA-18-702

Dear Mr. Wolf:

Attached are the *Comments* of the Minnesota Department of Commerce, Division of Energy Resources (Department), in the following matter:

Petition for Approval of the Acquisition of the Mankato Energy Center.

The *Petition* was filed on November 27, 2018 by:

Aakash H. Chandarana
Regional Vice President, Rates and Regulatory Affairs
Northern States Power Company
414 Nicollet Mall
Minneapolis, MN 55401

The Department responds to the issues raised by the Minnesota Public Utilities Commission (Commission). The Department's team of Nancy Campbell and myself is available to answer any questions the Commission may have.

Sincerely,

/s/ STEVE RAKOW
Analyst Coordinator

SR/ja
Attachment



Before the Minnesota Public Utilities Commission

Comments of the Minnesota Department of Commerce Division of Energy Resources

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

I. INTRODUCTION

On August 20, 2019 the Minnesota Public Utilities Commission (Commission) issued the Commission's *Notice Requesting Supplemental Comments* (Notice). The Notice indicates that two issues are open for comment regarding Northern States Power Company, doing business as Xcel Energy's (Xcel or the Company) *Petition for Approval of the Acquisition of the Mankato Energy Center* (Petition)

- What legal requirements apply and what actions would Xcel be required to take before an Xcel affiliate could purchase the Mankato Energy Center (MEC) and assume the power purchase agreement (PPA) to provide power to Xcel's regulated operations?
- Is prior Commission approval of an affiliated interest agreement required?

Below is the Minnesota Department of Commerce's (Department) analysis of the two issues open for comment.

II. DEPARTMENT ANALYSIS

A. LEGAL REQUIREMENTS

The first issue open for comment involves the legal requirements that apply and what actions Xcel would be required to take before an Xcel affiliate could purchase MEC and assume the PPA to provide power to Xcel's regulated operations. Regarding this issue, Minnesota Statutes § 216B.48, subd. 3 (Relations with Affiliated Interest or AI Statute) states in relevant part that:

No contract or arrangement, including any general or continuing arrangement, providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial, or similar services, and no contract or arrangement for the purchase, sale, lease, or exchange of any property, right, or thing, or for the furnishing of any service, property, right, or thing, other than those above enumerated, made or entered into after January 1, 1975 **between a public utility and any affiliated interest** as

defined in subdivision 1, clauses (1) to (8), or any arrangement between a public utility and an affiliated interest as defined in subdivision 1, clause (9), made or entered into after August 1, 1993, **is valid or effective unless and until the contract or arrangement has received the written approval of the commission.**¹ Regular recurring transactions under a general or continuing arrangement that has been approved by the commission are valid if they are conducted in accordance with the approved terms and conditions. **The commission shall approve the contract or arrangement made or entered into after that date only if it clearly appears and is established upon investigation that it is reasonable and consistent with the public interest.** No contract or arrangement may receive the commission's approval unless satisfactory proof is submitted to the commission of the cost to the affiliated interest of rendering the services or of furnishing the property or service to each public utility. Proof is satisfactory only if it includes the original or verified copies of the relevant cost records and other relevant accounts of the affiliated interest, or an abstract or summary as the commission may deem adequate, properly identified and duly authenticated, provided, however, that the commission may, where reasonable, approve or disapprove the contracts or arrangements without the submission of cost records or accounts. The burden of proof to establish the reasonableness of the contract or arrangement is on the public utility.

Since an Xcel affiliate purchasing MEC and assuming the PPA to provide power to Xcel's regulated operations would involve a "contract or arrangement ... between a public utility and any affiliated interest" under the AI Statute, the legal requirements of the AI Statute must be met. Thus, Xcel would need to file an affiliated-interest petition if the Company decides to follow such a course in the future.

B. PRIOR APPROVAL

The AI Statute requires that "No contract or arrangement ... between a public utility and any affiliated interest ... is valid or effective unless and until the contract or arrangement has received the written approval of the commission." Therefore, Commission approval is necessary, consistent with the standard that such approval may be given "only if it clearly

¹ Note that clause (9) includes in the definition of an affiliate, "every part of a corporation in which an operating division is a public utility."

appears and is established upon investigation that it is reasonable and consistent with the public interest.”

While Commission approval of an affiliated interest agreement is required, the Commission need not rule on a potential affiliate purchase when the petition filed in this proceeding is taken up. Instead, review of affiliated interest issues would take place if and when Xcel files any affiliated-interest petition, subsequent to investigation.

III. DEPARTMENT CONCLUSION AND RECOMMENDATION

If Xcel proposes that an affiliate purchase MEC and assume the PPA to provide power to Xcel’s regulated operations, Minnesota Statute § 216B.48 would require Xcel to file an affiliate-interest petition.

The Department recommends that Commission review of any affiliated interest issues take place if and when Xcel files such an affiliated-interest petition, based on the investigation and record in such a proceeding.

/ja

CERTIFICATE OF SERVICE

I, Linda Chavez, hereby certify that I have this day served copies of the following document on the attached list of persons by electronic filing, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

MINNESOTA DEPARTMENT OF COMMERCE – COMMENTS

Docket Nos. **IP6949,E002/PA-18-702**

Dated this **29th** day of **August, 2019**.

/s/Linda Chavez

[illegible]

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