

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

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

In the Matter of Northern States Power  
Company's Petition for Approval of Affiliated  
Interest Agreements for Purchased Power  
from Mankato Energy Center I and II

DOCKET NO. E-002/AI-19-622

**COMMENTS OF THE OFFICE OF  
THE ATTORNEY GENERAL**

**INTRODUCTION**

The Office of the Attorney General—Residential Utilities and Antitrust Division (“OAG”) submits the following comments and recommendations in response to the Minnesota Public Utilities Commission’s (“Commission”) Notice of Comment Period, dated October 9, 2019 (“Notice”). The Commission issued its Notice after the filing of the Petition of Northern States Power Company d/b/a/ Xcel Energy (“Xcel” or “Company”) for Approval of Affiliated Interest Agreements for Purchased Power from Mankato Energy Center I and II (“Petition”).

Xcel’s Petition argues that the affiliated interest agreements for MEC I and II are reasonable and consistent with the public interest given that “the Company intends to institute various protections to ensure that neither MEC Holdings nor the MEC LLCs are advantaged by their affiliation to NSPM.”<sup>1</sup> To execute the Company’s general reassurance, Xcel’s Petition presents six high-level “structures and protections” spanning merely one page in length.<sup>2</sup>

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<sup>1</sup> *In the Matter of Northern States Power Company’s Petition for Approval of Affiliated Interest Agreements for Purchased Power from Mankato Energy Center I and II*, Docket No. E-002/AI-19-622, Petition at 10 (Oct. 3, 2019) (hereinafter “Petition”).

<sup>2</sup> Petition at 10-11.

## PUBLIC

Despite Xcel's portrayal of a seemingly innocuous transaction, MEC Holdings' ownership and administration of the PPAs governing the MEC Facility presents a multitude of reasonably foreseeable future financial, accounting, legal and ethical issues and implications that could harm Minnesota ratepayers. Xcel's "protections" lack the specificity necessary to ensure that adequate ratepayer protections are in place; thus, the Company falls woefully short of demonstrating that the Petition is reasonable and consistent with the public interest.

Minnesota ratepayers deserve comprehensive protections proposed by Xcel—not the OAG or other consumer protection advocates—that are based on well-established and generally accepted best practices. Such a proposal would then be subject to the typical notice-and-comment procedure, resulting in a fully-developed analysis and comprehensive protections. If the Commission grants the Petition, such approval should be conditional and contingent on Xcel refining and revising its proposed "structures and protections" such that, at a minimum, the Company covers the following topics:

(1) Xcel shall *identify* all reasonably foreseeable possible financial, accounting, legal, ethical and other issues that could harm ratepayers in the event MEC Holdings steps into Southern Power's shoes for the MEC I and II PPAs;

(2) Xcel shall *survey generally recognized and well-established best practices* adopted or implemented by other public utilities or public services commissions across the nation with regard to affiliate transactions;

(3) Xcel shall *develop and draft* comprehensive written procedures and protocols (including employee training) that the Company will implement in order to ensure those identified reasonably foreseeable ratepayer harms are avoided and mitigated;

(4) Xcel shall propose how best to *track and monitor compliance* with the comprehensive written procedures and protocols; and

(5) Xcel shall propose how best to *report to the Commission and address noncompliance* with the Company's comprehensive written procedures and protocols.

## PUBLIC

Consumer protection advocates should be afforded the opportunity to “kick the tires” of a robust utility-developed proposal instead of being put in the position of “building the car,” as Xcel’s Petition requires in this instance.

### BACKGROUND

The OAG does not disagree with Xcel’s high-level background concerning the formation and Commission-approval of the PPAs governing MEC I and II. The OAG does, however, provide further background concerning the Commission’s 1998 decision declining—at that time—to impose a code of conduct governing utilities’ affiliated transactions. Furthermore, the OAG briefly outlines actions taken by Michigan concerning affiliated transactions—a state in which Xcel conducts business—since the Commission’s 1998 decision. It is the OAG’s hope that this background—in conjunction with the Analysis & Recommendations Section—provides the Commission with a thumbnail sketch of the types of fully-formed ratepayer protections that Xcel should develop and implement if the Commission conditionally grants the Petition.<sup>3</sup>

#### **I. THE COMMISSION DECLINED TO IMPOSE A CODE OF CONDUCT GOVERNING AFFILIATED INTEREST CONTRACTS AND ARRANGEMENTS IN 1998, DESPITE XCEL’S NON-OPPOSITION TO SUCH AN APPROACH.**

Despite the Commission’s 1998 decision declining to impose a code of conduct governing electric and natural gas utilities’ transactions with affiliated entities or individuals—reasoning it would be “premature in this docket, given its limited scope: streamlining the

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<sup>3</sup> While the OAG’s initial comments provide the Commission with a sole example of an affiliated transaction code of conduct adopted in Michigan, the OAG reserves the right to provide further examples during reply comments, based on the Company’s responses to pending information requests.

## PUBLIC

administration of affiliated interest filings”<sup>4</sup>—Xcel, at that time, did “not oppose a process to examine adoption of standards of conduct.”<sup>5</sup>

In that docket, a commenting party suggested that “the most effective means to accomplish” the Commission’s desire “to streamline the regulatory process” while balancing “the Commission’s obligation to protect against affiliate abuse and to insure that the consumer is in no way harmed by a utility’s contract or arrangement with an affiliated interest” is “for the Commission to adopt a comprehensive code of conduct.”<sup>6</sup> In response, Xcel did not oppose such process and instead the Company reasoned that:

In fact, NSP has argued to the South Dakota PUC, North Dakota PSC and PSC of Wisconsin that as long as the actual standards of conduct are reasonable, such standards can be beneficial to all interested parties because the “rules of the road” are made clear up front, rather than reviewed on an after-the-fact, case-by-case basis.<sup>7</sup>

In the years since the Commission declined to adopt a comprehensive code of conduct governing utilities’ affiliated transactions, other state and federal regulatory bodies in which Xcel conducts business have done so, as recognized by the Company’s own *Code of Conduct*,<sup>8</sup> which states:

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<sup>4</sup> *In the Matter of a Commission Investigation into Procedures for Reviewing Public Utility Affiliated Interest Contracts and Arrangements*, Docket No. E-999/CI-98-651. Order Initiating Repeal of Rule, Granting Generic Variance, and Clarifying Internal Operating Procedures at 8 (Sept. 14, 1998) (hereinafter “Sept. 14, 1998 Order”).

<sup>5</sup> *In the Matter of a Commission Investigation into Procedures for Reviewing Public Utility Affiliated Interest Contracts and Arrangements*, Docket No. E-999/CI-98-651, Reply Comments of Northern States Power Company at 5 (June 26, 1998) (hereinafter “Xcel June 26, 1998 Comments”).

<sup>6</sup> *In the Matter of a Commission Investigation into Procedures for Reviewing Public Utility Affiliated Interest Contracts and Arrangements*, Docket No. E-999/CI-98-651, Corrected Comments of Enron Energy Services, Inc. at 3 (June 18, 1998).

<sup>7</sup> Xcel June 26, 1998 Comments at 5.

<sup>8</sup> See generally Xcel Energy, Inc., *Code of Conduct* (June 2019 ed.) available at [https://www.xcelenergy.com/staticfiles/xcel/PDF/Supplier\\_Code\\_of\\_Conduct.pdf](https://www.xcelenergy.com/staticfiles/xcel/PDF/Supplier_Code_of_Conduct.pdf) (June 2019 edition) (hereinafter “June 2019 Xcel *Code of Conduct*”); see also *id.* at 2 (recognizing that the document’s terms are broadly applicable to all Xcel employees—including the employees of Xcel’s subsidiaries and affiliates—whether classified as non-bargaining or bargaining unit employees, and further providing that “[t]he term employee . . . includes executive officers and all other regular, full-time, part-time and temporary employees, whether benefitted or non-benefitted.”).

## PUBLIC

Certain federal and state regulatory agencies have adopted standards of conduct, codes of conduct or other rules that govern the business transactions between Xcel Energy and our affiliates, or between Xcel Energy affiliates, or even between business areas within Xcel Energy. These rules, standards and code requirements are complex and can change, as utility regulation continues to change at both the federal and state levels.

We follow applicable affiliate transaction rules, standards of conduct and codes of conduct.

### **II. SINCE THE COMMISSION’S 1998 ORDER, VARIOUS REGULATORY BODIES IN WHICH XCEL CONDUCTS BUSINESS, INCLUDING MICHIGAN, HAVE IMPLEMENTED CODES OF CONDUCT GOVERNING TRANSACTIONS BETWEEN UTILITIES AND THEIR AFFILIATES.**

In December 2000, the Michigan Public Service Commission (“MPSC”) issued an order adopting a code of conduct governing transactions involving electric utilities and their affiliates.<sup>9</sup> The MPSC’s code of conduct adopted by the December 2000 order was refined and revised on rehearing through an MPSC order dated October 29, 2001.<sup>10</sup> The MPSC Code Order adopting the code notes that it seeks to establish “measures to prevent cross-subsidization, information sharing, and preferential treatment between the regulated and unregulated operations of electric utilities, alternative electric suppliers, and their affiliates.”<sup>11</sup>

In essence, MPSC’s six-page code of conduct sets forth various provisions that seek to ensure that utilities and their affiliates:

- Prohibit subsidization in any manner, directly or indirectly, of the unregulated business of its affiliates or other separate entities.
- Maintain books and records separately from those of its affiliates or other entities within the corporate structure.

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<sup>9</sup> *In the Matter of the Approval of a Code of Conduct for Consumers Energy Co. and the Detroit Edison Company*, Case No. U-12134, Order on Rehearing at 1, 12 (Oct. 29, 2001) (“MPSC Code Order”) (recognizing that the MPSC issued its December 4, 2000 order in response to Public Act 141 of 2000, the Customer Choice and Electricity Reliability Act, which “directed the [MPSC] to issue, within 180 days, an order establishing a code for all electric utilities regulated by the [MPSC] and for all alternative suppliers”) available at <https://mi-psc.force.com/sfc/servlet.shepherd/version/download/068t0000000vFTzAAM>.

<sup>10</sup> See generally MPSC Code Order at Exhibit A.

<sup>11</sup> MPSC Code Order, Exhibit A at 1.

## PUBLIC

- Prohibit the sharing of facilities, equipment, or operating employees, while allowing for the sharing of computer hardware and software with documented protection to prevent discriminatory access to competitively sensitive information.
- Prohibit the sharing of information obtained by the electric utility or alternative electric supplier gathered as a result of its regulated business with its affiliates or other entities within the corporate structure, unless the same information is provided to competitors operating in Michigan on the same terms and conditions and contemporaneously.<sup>12</sup>

In response to the MPSC Code Order, Xcel submitted a 40-page compliance plan filing setting forth how the Company intended to comply with the code.<sup>13</sup> The Company's compliance plan also sought waivers from certain provisions of the code, largely premised on the argument that Xcel had a small service territory and due to allegedly duplicative federal compliance requirements with FERC and the SEC.<sup>14</sup> In response to Xcel's compliance plan and waiver request, the MPSC granted in part and denied in part the relief requested by the Company, but generally required that Xcel "adheres to the remaining provisions of the code of conduct, including maintaining separate books and accounts for regulated and unregulated operations and properly and fully allocated the costs of providing these services between regulated and unregulated operations."<sup>15</sup>

In contrast to Xcel's more limited 40-page filing with the MPSC, Consumers Energy Company—which has a larger presence in Michigan more akin to Xcel's Minnesota presence—filed with the MPSC a two-part compliance and request for waiver filing comprising a total of

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<sup>12</sup> See generally MPSC Code Order at Exhibit A.

<sup>13</sup> *In the Matter of the Approval of a Code of Conduct for Consumers Energy Co. and the Detroit Edison Company*, Case No. U-12134, Xcel's Compliance Filing and Plan to Achieve Full Compliance with Code of Conduct (filed Dec. 27, 2001) available at <https://mi-psc.force.com/sfc/servlet.shepherd/version/download/068t0000000vFUTAA2>

<sup>14</sup> See generally *id.*

<sup>15</sup> *In the Matter of the Approval of a Code of Conduct for Consumers Energy Co. and the Detroit Edison Company*, Case No. U-12134, Order and Opinion at 3 (Oct. 3, 2002) available at <https://mi-psc.force.com/sfc/servlet.shepherd/version/download/068t0000000vFAQAA2>.

## PUBLIC

141 pages.<sup>16</sup> The OAG provides this background in order to demonstrate to two main points to the Commission. First, the OAG encourages the Commission to acknowledge the level of detail and far reaching scope of compliance filings required to adequately comply with the six-page MPSC code of conduct governing affiliate transactions. Second, the OAG provides the MPSC example such that the Commission has a real-world comparison with which to juxtapose with the proposals contained within Xcel's Petition, which the next background section covers.

### **III. XCEL'S SIX "STRUCTURES AND PROTECTIONS" ARE INSUFFICIENT TO "ENSURE" THAT NEITHER MEC HOLDINGS NOR THE MEC LLCs ARE ADVANTAGED BY THEIR AFFILIATION TO NSPM.**

In Xcel's Petition, the Company states that it "intends to institute various protections to ensure that neither MEC Holdings nor the MEC LLCs are advantaged by their affiliation to NSPM and that all costs of supporting those entities are accurately assigned to them and not subsidized by NSPM or any of its other affiliates."<sup>17</sup> Specifically, Xcel's Petition sets forth six "structures and protections" that taken "[t]ogether," the Company believes "will ensure that MEC Holdings is not subsidized or unfairly supported by NSPM either during the course of the PPAs or after their expiration,"<sup>18</sup> including:

First, all plant employees at MEC will be employed directly by MEC Holdings and not by NSPM. The leadership of MEC Holdings will also be different from NSPM's leadership. The Executive Vice President and Group President, Operations for Xcel Energy Services was appointed President of MEC Holdings. Other XES employees will provide accounting, finance, regulatory, legal, procurement and other services to MEC Holdings.

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<sup>16</sup> *In the Matter of the Approval of a Code of Conduct for Consumers Energy Co. and the Detroit Edison Company*, Case No. U-12134, Consumer Energy Company's Code of Conduct and Requests for Waivers—Part 1 (filed Dec. 28, 2001) available at <https://mi-psc.force.com/sfc/servlet.shepherd/version/download/068t0000000vFUxAAM>; *In the Matter of the Approval of a Code of Conduct for Consumers Energy Co. and the Detroit Edison Company*, Case No. U-12134, Consumer Energy Company's Code of Conduct and Requests for Waivers—Part 2 (filed Dec. 28, 2001) available at <https://mi-psc.force.com/sfc/servlet.shepherd/version/download/068t0000000vFUxAAM>.

<sup>17</sup> Petition at 2.

<sup>18</sup> Petition at 10-11.

## PUBLIC

Second, all XES employees who provide support to MEC Holdings (or its subsidiaries) will be required to directly charge MEC Holdings for all time and expenses associated with that work. This will ensure that MEC Holdings accurately incurs all costs associated with work completed to support its operations, accounting, and corporate activity.

Third, MEC Holdings and the MEC Entities will execute standard form Service Agreements with XES. The terms of the Service Agreements will be substantively identical to those contained in the Service Agreement between the Company and XES. Pursuant to the agreements, XES will provide services to MEC Holdings and the MEC Entities on an “at-cost” basis using the same allocation methods applied to allocate XES costs to the Company and other Xcel Energy subsidiaries.

Fourth, an employee of MEC Holdings will be responsible for managing the MEC LLC’s side of each PPA and that employee will be segregated from the Company’s existing Purchased Power group, which will be responsible for managing NSP’s side of the agreements. The Purchased Power group’s management of NSP’s side of the agreements will remain unchanged and will ensure the Company’s customers receive all of the benefits to which they are entitled under the PPAs. We believe this structure and “wall” will protect against any potential conflicts of interest arising in connection with management of each parties’ rights and obligations under the PPAs.

Fifth, we note that FERC—which will regulate the MEC LCCs as market-regulated power sales affiliates under its regulations—prohibits certain sharing of information between NSP and the MEC LLCs. Specifically, FERC’s Affiliate Restrictions provide that a franchised public utility with captive customers “may not share market information with a market regulated power sales affiliate if the sharing could be used to the detriment of captive customers, unless simultaneously disclosed to the public.” 18 C.F.R. § 35.39(d)(1).

Finally, to the extent MEC Holdings wishes to continue selling power to NSPM following the expiration of the existing PPAs, it will do so only by bidding the units into a competitive bidding process that uses an independent evaluator. If the MEC LLCs are selected through that bidding process, the Company would negotiate a contract and file a petition for approval of the contract with the Commission. A new FERC approval under section 205 of the Federal Power Act would also be required for any such continued sales.<sup>19</sup>

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<sup>19</sup> Petition at 10-11 (footnote omitted).



## PUBLIC

### ANALYSIS & RECOMMENDATIONS

The OAG first demonstrates that Xcel’s Petition is neither reasonable nor consistent with the public interest. The OAG makes this showing in a two-fold manner by (1) explaining the types of holistic and comprehensive issues that Xcel’s “structures and protections” have failed to consider; and (2) providing several reasonably foreseeable examples of ratepayer harms that the Petition neither contemplates nor seeks to avoid or mitigate.

Second, the OAG recommends that if the Commission grants the Petition, it do so conditionally and require Xcel undertake a survey of generally recognized and well-established best practices adopted or implemented by other public utilities or public services commissions across the nation with regard to affiliate transactions.<sup>20</sup> The OAG provides certain examples of these types holistic and comprehensive protections but recommends that the Commission require Xcel to undertake a larger scale survey and incorporate its findings into any refined and revised “structures and protections.”

Finally, the OAG recommends certain specific ratepayer protections that the Commission should impose on Xcel if it grants the Petition but declines to adopt the OAG’s conditional approval approach.

**I. XCEL’S SIX “STRUCTURES AND PROTECTIONS” ARE INADEQUATE TO FULLY PROTECT RATEPAYERS AND THE COMMISSION SHOULD FIND THE PETITION AS CURRENTLY PROPOSED IS NEITHER REASONABLE NOR CONSISTENT WITH THE PUBLIC INTEREST.**

**A. Xcel’s Proposed Protections Are Far Too Limited In Scope And Granularity To Be Deemed Either Reasonable Or Consistent With The Public Interest.**

The OAG questions the efficacy of Xcel’s proposed “structures and protections,” given the evident lack of specificity accompanying the Petition. As it is currently drafted, Xcel’s

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<sup>20</sup> The Commission should further order Xcel to survey other state commissions to assess how best to protect ratepayers in similar situations to those presented here, where an affiliate owns a generating unit that provides power to a regulated utility under a long-term PPA or other contractual arrangement.

## PUBLIC

Petition fails to demonstrate either reasonableness or consistency with the public interest due to the glaring omission of specificity. Instead, the OAG contends that Xcel's Petition can only be deemed to meet the requisite evidentiary burden if the Commission conditionally approves the Petition subject to requiring the Company to complete a comprehensive supplemental filing<sup>21</sup> subject to notice and comment and later Commission approval or rejection that, at a minimum, includes the following topics:

(1) Xcel shall *identify* all reasonably possible financial, accounting, legal and ethical issues presented by the Petition that could result in harms to ratepayers;

(2) Xcel shall *survey recognized and well-established best management practices* adopted or implemented by other public utilities or public services commissions across the nation with regard to affiliate transactions;

(3) Xcel shall *develop and draft* comprehensive written procedures and protocols that the company intends to implement in order to ensure those identified future potential harms are avoided to the greatest extent possible, and otherwise mitigated to minimize any resulting harm;

(4) Xcel shall determine how best to *track and monitor compliance* with the comprehensive written procedures and protocols; and

(5) Xcel shall determine how best to *report to the Commission and address noncompliance* with the Company's comprehensive written procedures and protocols.

Without robust protections that are comprehensive in scope and duration, Xcel's proposed protections are nothing more than platitudes or generalities. Only by comprehensively and systematically developing, implementing and tracking protective provisions will Xcel come closer towards satisfying the public interest. Without more "teeth" to Xcel's proposed protections, the Company may subject ratepayers to potential future harms that were neither identified nor adequately protected against or mitigated, as the OAG demonstrates in the next section.

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<sup>21</sup> There are myriad reasons why it is logical for Xcel to develop a comprehensive and holistic approach, including without limitation, because Xcel bears the burden of proof on the Petition and, more importantly, due to Xcel's intimate knowledge and familiarity with its systems and operations and the potential conflicts that may arise.

## PUBLIC

### **B. Xcel's Proposed Protections Are Neither Reasonable Nor Consistent With The Public Interest Given The Utter Lack Of Specificity.**

The Petition's proposed safeguards are not reasonable nor consistent with the public interest. Notably absent from Xcel's Petition is any detailed discussion regarding any potentially thorny issues that may arise during MEC Holdings' administration of the MEC Facility PPAs and how those issues may impact ratepayers. At minimum, the Commission should note that the Company's Petition entirely fails to analyze the PPAs section-by-section with any eye toward identifying and mitigating against reasonably foreseeable issues and implications that could harm Minnesota ratepayers through the administration of the PPAs. The OAG would expect for the Company to, at a bare minimum, provide a section-by-section overview of the PPAs and assess downstream ratepayer harms.

Similarly, Xcel's Petition does not even address the extent to which the provisions within the MIPA alter or otherwise effectively amend the terms of the MEC PPAs. From the OAG's review, it appears as if certain MIPA provisions establish rights and obligations with regard to the administration of the MEC PPAs as well as remedies and liabilities in the event of a breach of those power purchase contracts. The OAG suspects that the Commission would be curious to the extent the MIPA and the MEC PPA terms create additional obligations or otherwise result in the impermissible amendment to the PPA terms. Accordingly, the Commission should require Xcel to undertake such an inquiry and explain how the contractual documents are interrelated while verifying that the MIPA's terms in no way alter or impact the terms within the PPAs. Moreover, the OAG finds it concerning that Xcel has not even disclosed to the Commission or other parties the terms of the amended MIPA, which may create even more contractual conflicts.

Additionally, the Petition's proposed protections fail to address how Xcel will ensure that the confidential information it learned during the negotiation process with Southern Power

## PUBLIC

regarding the MEC Facility will be ethically protected against disclosure. After all, Section 5.09(a) of the MIPA notes that **[Trade Secret Data Begins]**

**[Trade Secret Data Ends]** At a minimum, the OAG contemplates that the Commission would be interested in determining from Xcel: (1) the identities of all Xcel employees that learned confidential information regarding the MEC facilities; (2) what information they learned; (3) whether those individuals are employed by XES or NSPM or other Xcel subsidiaries, including a description of those employees job titles; and (4) how the Petition's supposed protections address or mitigate NSPM's use of that confidential information.

Instead, the Petition seemingly relies almost entirely on the Commission's prior approval of the PPAs in the past as an imprimatur for approval in this instance. The public interest test dictates more than just a retrospective analysis, but must be forward-looking and prospectively identify and mitigate against ratepayer harms associated with MEC Holdings' administration of the PPAs governing the MEC Facility.

The OAG contends that the Petition's presently-drafted "structures and protections" have the potential to cause myriad reasonably foreseeable financial, accounting, legal and ethical issues and implications could harm Minnesota ratepayers. Allowing MEC Holdings to "step into the shoes" of Southern Power creates an implied—if not explicit—conflict of interest between MEC Holdings (and the MEC LLCs) and NSPM. MEC Holdings, as an unregulated affiliate of Xcel, has a fiduciary obligation to maximize the profits to Xcel's shareholders. Such a profit-driven motivation has the potential to cause

## PUBLIC

reasonably foreseeable harms to Minnesota ratepayers in the event there is a dispute between NSPM and MEC Holdings (or the MEC LLCs)<sup>23</sup> regarding one of the PPAs’ “ratepayer protections” which the Commission found appealing during resource acquisition.

Although there are numerous examples from which to choose, the OAG provides two reasonably foreseeable scenarios in which a conflict between NSPM and MEC Holdings (or the MEC LLCs) over the administration of the PPAs governing MEC I and II may result in harms to ratepayers.<sup>24</sup> The OAG will first briefly discuss the downstream consequences that are reasonably likely in the context of capacity payments and forced outages based on historical events between Xcel and Southern Power at the MEC Facility. After that discussion, the OAG will briefly analyze similar concerns related to heat rate testing and the potential that MEC Holdings fails to achieve projected energy efficiency thresholds.

With regard to capacity payments and forced outages, as discussed in the OAG’s comments filed in MEC acquisition docket (No. 18-702), the PPAs governing the MEC Facility allocate some risk related to forced outages to the owner.<sup>25</sup> When a forced outage occurs, Xcel and its ratepayers are protected in several ways. First, Xcel does not make capacity

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<sup>23</sup> As was the case between NSPM and Southern Power during the latter’s 2014 forced power outage, for example.

<sup>24</sup> These are merely a few of many examples that are reasonably foreseeable given the conflict between Xcel’s regulated and unregulated affiliates in conjunction with the administration of the PPAs for MEC I and II. *See also*, e.g., Petition, Attachment B at 134–35, Exhibit M (energy adjustment payments); *see also generally id.*, Attachment B (Sections 1.3 (Good Faith and Fair Dealing); 1.4 (Waiver); 2.1-2.6 (Term and Termination); 4.1-4.4 (Implementation); 7.1-7.5 (Sale and Purchase); 8.1-8.7 (Payment Calculations); 9.1-9.3 (Billing and Payment); 10.1-10.6 (Operations and Maintenance); 11.1-11.2 (Security for Performance); 12.1-12.5 (Default and Remedies); 13.1 (Dispute Resolution); 14.1-14.3 (Force Majeure); 15.1-15.3 (Representations and Warranties); 16.1-16.3 (Insurance); 17.1-17.4 (Indemnity); 18.1-18.4 (Lender Provisions); 20.4 (Fines and Penalties); 20.18 (Confidentiality)).

<sup>25</sup> *In the Matter of the Petition* by Northern States Power Company d/b/a Xcel Energy for Approval of the Acquisition of the Mankato Energy Center (MEC), Docket Nos. IP-6949, E-002/PA-18-702, IP-6949/GS-15-620, Petition, Comments of the Office of the Attorney General at 14-15 (Mar. 5, 2019).

## PUBLIC

payments during forced outages.<sup>26</sup> Second, the owner of MEC is required to provide replacement energy to the NSP node, and the owner is required to pay transmission costs for the replacement power.<sup>27</sup> Third, Xcel is protected from the costs of restoring the facility to service after a forced outage, because the owner is required to pay.

Ratepayers are meant to benefit from this negotiated arrangement. According to a summary of information provided by Xcel, the MEC Facility was in a forced outage for **[Trade Secret Data Begins]** **[Trade Secret Data Ends]** during 2014 (or approximately **[Trade Secret Data Begins]** **[Trade Secret Data Ends]** percent of the year.)<sup>28</sup> MEC does not have a forced outage so frequently in every year, but 2014 provides an example of what can go wrong. When the plant went into a forced outage, ratepayers were protected from capacity payments, replacement power costs including extra transmission costs,<sup>29</sup> and the cost of bringing the plant out of the forced outage. The costs of forced outages at MEC can be significant. In 2017, for example, Southern Company paid approximately \$30 million to recover from what was labeled as a “Forced Outage.”<sup>30</sup> It appears that Xcel and its ratepayers were fully insulated from this cost—because of the PPA.

If, however, NSPM and MEC Holdings become embroiled in a dispute regarding a forced outage to the MEC Facility, the inherent and pervasive conflicts of interest may well incentivize MEC Holdings to drive a hard bargain or require NSPM to incur significant legal costs to compel compliance with the PPA terms. Even worse, it is not beyond comprehension to envision a

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<sup>26</sup> *Id.* at 14 (citing OAG Information Request 64, Exhibit 6; OAG Information Request 53, Exhibit 7).

<sup>27</sup> *Id.* at 14 (citing OAG Information Request 65, Exhibit 8).

<sup>28</sup> *Id.* at 15 (citing OAG Information Request 53, Attachment A, Summary Tab, Exhibit 9).

<sup>29</sup> *Id.* at 15 (citing OAG Information Request 65, Exhibit 8).

<sup>30</sup> *Id.* at 15 (citing OAG Information Request 25.1, Exhibit 10).

## PUBLIC

situation in which MEC Holdings incurs liability in an amount that it decides to default on its acquisition thus forcing NSPM to step in to operate the facility.

As a result, MEC Holdings' profit-driven motives may result in harm to NSPM's ratepayers through increased contractual administration and associated legal costs or by being forced to accept a negotiated settlement of any such dispute short of what the ratepayers are entitled to under the PPA. Even more troubling than the inherent conflict of interest is the lack of stringent protections surrounding the sharing of information between MEC Holdings, XES and NSPM. This lack of specificity may well provide an opportunity to harm ratepayers by using confidential information to get the best deal for Xcel's shareholders while harming its ratebase.

Similar concerns are present with regard to heat rate testing and the potential that MEC Holdings fails to achieve projected energy efficiency thresholds, which the OAG also discussed in the MEC acquisition docket (No. 18-702).<sup>31</sup> The PPA includes financial incentives to maintain good (low) heat rates: under the MEC II PPA, Xcel would receive a discounted price for the energy from MEC if MEC Holdings does not achieve the projected efficiency thresholds.<sup>32</sup> The existing PPA also requires Southern to pay for heat rate testing costs to ensure compliance with the PPA.<sup>33</sup> The same concerns the OAG raised above are likewise applicable in this context as well.

The Commission clearly did not envision the PPAs' ratepayer protections, which were major selling points in selecting and approving the PPAs governing the MEC Facility, being a

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<sup>31</sup> *In the Matter of the Petition* by Northern States Power Company d/b/a Xcel Energy for Approval of the Acquisition of the Mankato Energy Center (MEC), Docket Nos. IP-6949, E-002/PA-18-702, IP-6949/GS-15-620, Petition, Comments of the Office of the Attorney General at 17 (Mar. 5, 2019).

<sup>32</sup> *Id.* (citing Petition, Attachment C, ¶ 8.4).

<sup>33</sup> *Id.* (citing OAG Information Request 69, Exhibit 13).

## PUBLIC

potential source of future ratepayer harms. In sum, the OAG finds it troubling that Xcel's proposed protections fail to account for a variety of downstream situations that have the reasonable potential to harm Minnesota ratepayers. Accordingly, the Commission should further inquire with Xcel about certain topics, including, but not limited to the following:

- How does Xcel intend to protect the confidential information it learned during its acquisition negotiations with Southern Power with regard to the MEC Facility?
- How does Xcel intend to ensure that NSPM's "side of the agreements will remain unchanged" and why is this obligation not imposed on the MEC Holdings employee overseeing the MEC LLC's side of each PPA?
- How will Xcel segregate its employees providing services to NSPM and MEC Holdings?
- How will Xcel ensure that XES employees providing services to NSPM and MEC Holdings do not disclose sensitive or confidential information between the entities?
- How do the MIPA (and amended MIPA) terms impact, influence, or otherwise conflict with the terms of the MEC PPAs?
- What steps did Xcel take to determine the potential for ratepayer harm associated with the Petition? Did Xcel review each provision in the PPAs to ensure that potential ratepayer harms were identified in the context of Xcel's unregulated affiliate's administration of the contracts and ownership of the facility?
- How will Xcel ensure that the costs associated with Xcel's unaffiliated acquisition of the MEC Facility and MEC Holdings' administration of the MEC PPAs will not be passed through to ratepayers in future rate cases?
- How will Xcel ensure that NSPM's payments under the MEC PPAs remain consistent with historical averages?
- To what extent has Xcel agreed to release Southern Power from its obligations under the MEC PPAs, including those related to damages, penalties, indemnification and otherwise?

To effectively and adequately address these ratepayer concerns, the Commission should require Xcel to refine and redevelop its proposed "structures and protections," as the OAG discusses in the following sections.



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### **II. IF THE COMMISSION GRANTS THE PETITION, IT SHOULD DO SO CONDITIONALLY AND SUBJECT TO XCEL SUBMITTING A SUPPLEMENTAL FILING THAT COMPREHENSIVELY IDENTIFIES POTENTIAL FUTURE RATEPAYER HARMS AND IMPLEMENTS, MONITORS, TRACKS AND REPORTS AVOIDANCE, MITIGATION AND NONCOMPLIANCE MEASURES.**

#### **A. The MPSC Code Order And Associated Compliance Filings And Orders Demonstrate That The First Five Of Xcel's "Structures And Protections" Are Neither Sufficiently Broad In Scope Nor Specific In Detail.**

The OAG recommends that the Commission instruct Xcel to review the MPSC Code Order and associated compliance filings and orders by the MPSC as a starting point to help provide additional examples of the types of rigorous and broad protective provisions necessary to ensure that ratepayers are not harmed as a result of the Petition.<sup>34</sup> What follows is a list of requirements from the MPSC Code Order that the OAG tailored to Xcel that are just among a few examples of the types of provisions that Xcel should consider implementing in the event the Commission conditionally approves the Petition as the OAG proposes:

**Separation:** Xcel shall ensure the structural or functional separation needed to prevent cross-subsidization, information sharing, and preferential treatment between the regulated and unregulated services, which includes, but is not limited to, the following:

- NSPM shall not offer unregulated products or services without prior Commission approval.
- NSPM's products or services, which are regulated, shall not subsidize in any manner, directly or indirectly, the business of MEC Holdings or other Xcel affiliates.
- NSPM shall maintain its books and records separately from those of MEC Holdings or other Xcel affiliates within its corporate structure.
- NSPM and MEC Holdings or other Xcel affiliates within its corporate structure shall not share facilities, equipment, or operating employees.
- NSPM's operating employees and the operating employees of MEC Holdings or other Xcel affiliates within its corporate structure shall function independently of each other and maintain separate offices.

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<sup>34</sup> MPSC Code Order Docket Webpage *available at* <https://mi-psc.force.com/s/case/500t0000008eePUAAY/in-the-matter-of-the-approval-of-a-code-of-conduct-for-consumers-energy-company-and-the-detroit-edison-company>.

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- NSPM shall not finance or co-sign loans for MEC Holdings or other Xcel affiliates within its corporate structure.
- No Xcel Energy, Inc. employee (including all entities within its corporate structure, whether wholly-owned or otherwise) may not transfer, permanently or temporarily, directly or indirectly, to MEC Holdings, LLC unless that employee has no knowledge of existing or contemplated PPAs related to MEC I or MEC II.
- NSPM and MEC Holdings or other Xcel affiliates within its corporate structure shall not engage in joint advertising, marketing, or other promotional activities related to the provision of regulated or unregulated services, nor shall they jointly sell regulated or unregulated services.
- NSPM shall not suggest that it will provide any customer with preferential treatment or service by doing business with the utility or MEC Holdings or other Xcel affiliates within its corporate structure offering unregulated services or products, nor shall NSPM suggest that any customer will receive inferior treatment or service by doing business with MEC Holdings or other Xcel affiliates within its corporate structure.
- NSPM shall not condition or otherwise tie the provision of a regulated service or the availability of discounts, rates, other charges, fees, rebates, or waivers of terms and conditions for regulated service to the taking of any unregulated goods or services from NSPM, MEC Holdings or other Xcel affiliates within its corporate structure.

**Discrimination:** Xcel shall not unduly discriminate in favor of or against MEC Holdings or other Xcel affiliates within its corporate structure, which includes, but is not limited to, the following:

- NSPM shall not provide MEC Holdings or other Xcel affiliates within its corporate structure preferential treatment or any other advantages, including without limitation the following: all aspects of NSPM's service, including pricing, responsiveness to requests for service or repair, the availability of firm and interruptible service, and metering requirements.
- If NSPM provides services, products, or property to MEC Holdings or other Xcel affiliates within its corporate structure, compensation shall be based upon the higher of fully allocated embedded cost or market price.
- If MEC Holdings or other Xcel affiliates within its corporate structure provides services products, or property to NSPM, compensation shall be at the lower of cost or market price. Transfers of assets shall be based upon the lower of original cost, net book value, or market price.
- NSPM shall not provide information or consultation to MEC Holdings or other Xcel affiliates within its corporate structure regarding a potential business arrangement between that affiliate or other entity within the corporate structure and a potential customer.

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- NSPM shall not refer a customer or potential customer to MEC Holdings or other Xcel affiliates within its corporate structure, nor steer a potential customer away from a non-affiliated entity, nor shall NSPM provide a customer or potential customer with advice or assistance regarding the selection of or relationship with an affiliate, other entity within the corporate structure, or other service provider.

**Disclosure of Information:** Information obtained by NSPM in the course of conducting its business shall not be shared directly or indirectly with MEC Holdings or other Xcel affiliates within its corporate structure, which includes, but is not limited to, the following:

- NSPM shall not provide MEC Holdings or other Xcel affiliates within its corporate structure with information about the distribution system, including operation and expansion.
- NSPM shall not provide any information received from or as a result of doing business with a competitor to MEC Holdings or other Xcel affiliates within its corporate structure without the written approval of the competitor.

**Compliance Plans:** NSPM shall file a compliance plan within 60 days of the order by the Commission on the Petition, which shall include, at a minimum:

- NSPM shall designate a corporate officer responsible for overseeing compliance with the code of conduct and that will be available to serve as the Commission's primary contact regarding compliance these provisions.
- NSPM shall include an affidavit signed by the designated corporate officer certifying that NSPM will comply fully with the code of conduct.
- NSPM will include a clear organization chart of the parent or holding company showing all regulated entities and affiliates and a description of all services and products provided between the regulated entity and its affiliates.
- NSPM shall file revisions to its compliance plan needed to keep the information contained therein current.

### **Oversight, Enforcement and Penalties:**

- NSPM shall maintain documentation needed to investigate compliance with these provisions. All documentation shall be kept at a designated NSPM office in Minnesota. NSPM shall make this information available for review upon request by the Commission or its Staff. NSPM's designated officer will either be available or make personnel available who are knowledgeable to respond to inquiries by the Commission or its Staff regarding compliance with these provisions.
- NSPM shall use a documented dispute resolution process separate from any process that might be available from the Commission. This dispute resolution process shall address complaints arising from application of these provisions and NSPM shall keep

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a log of all complaints, including: (1) the date the complaint was filed, (2) a written statement of the nature of the complaint, and (3) the results of the resolution process.

- NSPM shall file an annual report with the Commission summarizing the number and types of complaints received and their resolution.
- NSPM shall propose to the Commission what penalties the Company contends are appropriate for violations of the code of conduct

**B. Lessons Learned From An Independent Evaluator's Report In Massachusetts Demonstrate That the Sixth of Xcel's "Structures And Protections" Is Neither Sufficiently Broad In Scope Nor Specific In Detail.**

With regard to Xcel's sixth proposal to "ensure that neither MEC Holdings nor the MEC LLCs are advantaged by their affiliation to NSPM and that all costs of supporting those entities are accurately assigned to them and not subsidized by NSPM or any of its other affiliates,"<sup>35</sup> the Company suggests that:

Finally, to the extent MEC Holdings wishes to continue selling power to NSPM following the expiration of the existing PPAs, it will do so only by bidding the units into a competitive bidding process that uses an independent evaluator. If the MEC LLCs are selected through that bidding process, the Company would negotiate a contract and file a petition for approval of the contract with the Commission. A new FERC approval under section 205 of the Federal Power Act would also be required for any such continued sales.<sup>36</sup>

In the event MEC Holdings participates in future resource bidding, the OAG encourages the Commission to require Xcel to propose appropriate refinements to the two-track bidding process applicable to Xcel's resource procurement. The Commission should mandate that Xcel expand on its proposal and look into additional secondary authority with regard to best practices for affiliated resource bidding. For example, the independent evaluator assigned to oversee requests for proposals by Massachusetts distribution companies seeking to build offshore wind energy generation presented certain lessons it had learned in an April 2019 white paper

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<sup>35</sup> Petition at 2.

<sup>36</sup> Petition at 10-11 (footnote omitted).

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(“Competitive Bidding White Paper”).<sup>37</sup> This white paper, in part, analyzes Massachusetts’ competitive bidding process involving utilities and their affiliates in the context of three main areas: transparency, independent oversight and the disclosure of affiliate relationships.

The OAG suggests that, at a minimum, the Commission require Xcel to develop a Standard of Conduct based on best practices learned from the Competitive Bidding White Paper and implemented by Massachusetts’ utilities involved in affiliated transactions. The Competitive Bidding White Paper discusses the important function that utility-developed Standards of Conduct can have on ensuring transparency as a means of ensuring “that affiliates have no competitive advantage for gaining access to information that is not available to third-party bidders.”<sup>38</sup>

The OAG recommends that the Commission require Xcel to supplement the two-track bidding requirements and require that the Company develop, draft and seek Commission approval of a Standard of Conduct in the event that MEC Holdings wishes to participate in future resource bidding. This is especially important here, given Xcel’s acknowledgment in its Petition that it will be relying on XES employees to provide support to both MEC Holdings and NSPM.<sup>39</sup> As noted in Competitive Bidding White Paper, one utility’s use of an affiliated service company to provide services to both the utility and an affiliate resulted in “more opportunities for unauthorized transfer of confidential information and potentially other Standard of Conduct

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<sup>37</sup> See generally *Independent Evaluator Report on the Proposed Timetable and Method of Solicitation and Solicitation Process under Section 83C of the Green Communities Act—Round 2*, Peregrine Energy Group (April 1, 2019) available at <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/10550377> (hereinafter “Competitive Bidding White Paper”).

<sup>38</sup> Competitive Bidding White Paper at 26; see also *id.* at n. 45 (citing to two examples of Standards of Conduct prepared by Massachusetts’ utilities, which are available at appendices F-1 and F-2 [https://macleanenergy.files.wordpress.com/2019/08/83crfpr2\\_with-appendices-revised-08.7.19.pdf](https://macleanenergy.files.wordpress.com/2019/08/83crfpr2_with-appendices-revised-08.7.19.pdf)).

<sup>39</sup> See, e.g., Petition at 11.

## PUBLIC

violations” which necessitated the independent evaluator to “spen[d] considerable time and effort working with [the utilities] to strengthen the Standards of Conduct for this solicitation.”<sup>40</sup>

As described more fully by the Competitive Bidding White Paper:

It was important, in the IE’s opinion to provide stronger Standard of Conduct protections to the process in light of the relatively “weak” organizational structure for separating the Bid Team and the Evaluation Team, which seems particularly the case with Eversource. In most large-scale competitive procurements where a utility affiliate is a bidder, in the experience of the Peregrine IE team, the unregulated affiliate bidder has its own employees, who are located in separate buildings from the utility company, and have their own counsel and consultants. Eversource’s unregulated affiliate does not have its own employees, but uses employees from its energy services affiliate, Eversource Energy Service Company, which assigns professional service employees to both regulated and unregulated affiliates. These consist of two categories: employees in its enterprise energy strategy group which are said to form the core of the Bid Team as well as professional personnel (e.g., accounting, financial, legal) assigned from the services company. While this is not improper, the structure does create more opportunities for unauthorized transfer of confidential information and potentially other Standard of Conduct violations. In this context, the IE spent considerable time and effort working with Eversource and National Grid to strengthen the Standards of Conduct for this solicitation. Overall, the proposed RFP, taking into consideration the issues raised in this report regarding the “regulatory out” clause, which were not raised in the proposed RFP, satisfies the transparency principle, in the IE’s opinion.<sup>41</sup>

This same reasoning may be present in the future in the event XES employees provide services to both NSPM and MEC Holdings during any future resource procurement and competitive bidding process.<sup>42</sup> And, more immediately, Xcel’s reliance on XES to provide accounting, finance, regulatory, legal, procurement and other services to both MEC Holdings and NSPM makes this reasoning even more pertinent with regard to the first five of Xcel’s “structures and protections.”

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<sup>40</sup> Competitive Bidding White Paper at 28.

<sup>41</sup> Competitive Bidding White Paper at 28.

<sup>42</sup> It strikes the OAG that this situation is likely to unfold, especially given Xcel’s acknowledgment in the Petition that “all plant employees at MEC will be employed directly by MEC Holdings and not by NSPM.” Petition at 10. The OAG strongly doubt MEC Holdings will be directly employing professional personnel (e.g., accounting, financial, legal) but instead will rely on XES employees to provide that service.

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Accordingly, the OAG strongly recommends that the Commission require Xcel to develop a standard of conduct in the event MEC Holdings wishes to participate in future resource bidding processes that includes, at a minimum, the following protections, as paraphrased from the Competitive Bidding White Paper<sup>43</sup>:

### **Evaluation and Bid Teams**

- Xcel shall designate members to be on the Evaluation Team on behalf of NSPM or on the Bid Team, working on behalf of MEC Holdings. No individual shall be a member of both teams, and no individual may change from one team to the other during the solicitation process.
- Xcel shall publicly designate the names of members of the Evaluation Team and Bid Team
- Xcel shall ensure that all members of either the Evaluation or Bid Team have not previously worked on the requests for proposals and/or other resource acquisition proposals or bidding processes involving the MEC I or II PPAs.

### **Prohibition Against Using “Subject Matter Experts”**

- Xcel shall not use “subject matter experts”<sup>44</sup> during any competitive resource acquisition and bidding processes given that such practice “increases the risk of transfer of confidential information between the Evaluation Team and the Bid Team and may undermine the appearance of fairness and impartiality.”

### **Prohibition Against Sharing of Confidential Information**

- Confidential information regarding the Evaluation Team cannot be shared with any person who is not an Evaluation Team member.
- Confidential information regarding the Bid Team cannot be shared with any person who is not a Bid Team member.
- The obligation to maintain the confidentiality of information extends backward to the requests for proposals and/or other resource acquisition proposals or bidding processes

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<sup>43</sup> See generally Competitive Bidding White Paper at 25-30.

<sup>44</sup> “Subject matter experts” are defined by the Competitive Bidding White Paper as “individuals who are neither members of the Bid Team or Evaluation Team but who provide guidance or advice to the Bid Team and/or Evaluation Team in the normal course of their responsibilities and could communicate with members of both teams, although they could not be conduits for confidential information pertaining to the RFP.” Competitive Bidding White Paper at 26.

## PUBLIC

involving the MEC I or II PPAs and extends forward into the future for any bidding processes involving MEC Holdings.

### **Ensuring Compliance with Standards of Conduct**

- Xcel shall refer to its Standards of Conduct as “standards” rather than “guidelines.”
- Xcel shall require all members of its Evaluation Team and Bid Team to sign a certification regarding their commitment to comply with the Standards of Conduct.
- Xcel shall develop and conduct required training for individuals subject to the Standards of Conduct.
- Xcel shall require all members of its Evaluation Team and Bid Team to certify their compliance with the Standards of Conduct at the conclusion of any solicitation process involving MEC Holdings.
- Xcel’s designated compliance officer shall report compliance with the provisions set forth in the Standard of Conduct to any independent evaluator.
- Xcel’s Evaluation Team and Bid Team members shall disclose any actual or suspected noncompliance with the Standard of Conduct with Xcel’s designated compliance officer who shall then inform any independent evaluator regarding the nature of the violation, his or her opinion with respect to its materiality, and with a plan, if any, to cure or mitigate such violation and to prevent the prospect of reoccurrence.

### **Impermissible Affiliate Preference**

- The Evaluation Team and Evaluation Team members shall not treat the bid of an affiliate bidder (including any bid where an affiliate is participating in the bid) in a preferential manner or treat any other bid in a discriminatory manner.

In addition, the OAG encourages the Commission to instruct Xcel to review additional provisions contained within the two exemplar Standards of Conduct discussed in the Competitive Bidding White Paper to further strengthen any potential for future affiliate abuse in the event MEC Holdings participates in resource bidding procedures.<sup>45</sup>

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<sup>45</sup> See *supra* n.38.



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### **C. Affiliated Transaction Codes, Standards And Administrative Rules Protect Ratepayers And Promote The Public Interest Regardless Of The Deregulation Of Electric Utilities.**

The OAG expects that Xcel will contend that the codes or standards of conduct and other administrative rules promulgated by other states to combat abuses present in transactions between utilities and their affiliates are of limited value to the Commission given that they were developed by states that have deregulated electric utilities to promote competition. While such a question is well taken, the OAG notes that it is not currently requesting either that the Commission initiate a generic docket to develop a comprehensive code governing all rate-regulated utilities, or for that matter, adopt such a code that would apply to the Company in perpetuity for any and all future affiliate transactions. Instead, the OAG recommends that the Commission juxtapose Xcel's proposed "structures and protections" with relevant provisions from these existing authorities get closer toward the specificity and comprehensive nature necessary for affiliate transactions to be considered both reasonable and consistent with the public interest.

### **III. ANY COMMISSION DECISION GRANTING THE PETITION—EITHER OUTRIGHT OR CONDITIONALLY—SHOULD INCLUDE ADDITIONAL RATEPAYER PROTECTIONS.**

Whatever course the Commission takes on Xcel's Petition, the OAG respectfully requests that the Commission include the following important ratepayer protections that are implicated by this Petition and its interrelationships with Xcel's Merchant Acquisition:

- NSPM will not seek to recover in retail rates any legal, consulting, administrative, technology and related costs associated with this Petition and Docket No. 18-702;
- After closing, and in any rate proceeding filing within six years after the expiration of the PPAs for MEC I and II, as applicable, NSPM shall provide proof that no transaction, transition, and acquisition premium costs associated with this Petition and Docket No. 18-702 are included in historical expenses of NSPM or in the determination of revenue requirement;

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- Require Xcel to report to the Commission in the event MEC Holdings or one of the MEC LLCs hires an employee formerly affiliated with NSPM or any of its other affiliates and explain all actual potential and perceived conflicts of interests;
- Ensure that no compensation of any employee of MEC Holdings, MEC LLCs, or XES (if that employee is directly serving either MEC Holdings or the MEC LLCs) be recoverable in retail rates;
- MEC Holdings will identify and track all costs associated with operating the MEC Facility whether incurred by MEC Holdings, the MEC LLCs or another Xcel entity (e.g., XES) in a manner that it is readily reviewable and auditable by the Commission;
- XES will identify and track all legal, accounting, financial, and other associated costs and expenses relating to the MEC Facility in a manner that it is readily reviewable and auditable by the Commission;
- Xcel will not seek recovery of any acquisition adjustment or other adjustment related to goodwill or other intangible assets with regard this Petition and Docket No. 18-702;

## **CONCLUSION**

The Commission should reject Xcel's Petition due to its failure to satisfy either the reasonableness or public interest test. Alternatively, the Commission should conditionally grant the Petition and require Xcel to subsequently file a more robust and fully-formed set of proposed "structures and protections" that would comprehensively and adequately protect Minnesota

**PUBLIC**

ratepayers. If the Commission disagrees and unconditionally approves the Petition, it should include the specific ratepayer protections recommended by the OAG.

Dated: November 4, 2019

Respectfully submitted,

KEITH ELLISON  
Attorney General  
State of Minnesota

s/ **Max Kieley**

MAX KIELEY  
Assistant Attorney General  
Atty. Reg. No. 0389363

445 Minnesota Street, Suite 1400  
St. Paul, Minnesota 55101-2127  
(651) 757-1244 (Voice)  
(651) 296-9663 (Fax)  
max.kieley@ag.state.mn.us

OFFICE OF THE ATTORNEY GENERAL—  
RESIDENTIAL UTILITIES AND ANTITRUST  
DIVISION