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MN Docket 17-410

July 20, 2020

Response to Xcel's Comments

The following letter is written in response to the permittee's comments submitted on July 16, 2020. In that letter, the permittee asserted that my proposed amendment should be denied for the following reasons:

1. Amendment request is simply an invalid request for reconsideration.
2. The record, with regards to shadow flicker and shadow flicker management, contains no errors or ambiguity.

These arguments are not valid. My proposed amendment should be reviewed for consideration and should be accepted in an effort to achieve a common-sense solution to what will be a future issue.

1. Amendment Request is an invalid request for reconsideration.

In their response, Xcel maintains that my proposed amendment from June 8, 2020, is not truly an amendment request submitted via section 13.0 of the site permit. Instead, Xcel claims it is a veiled motion to reconsider. If true, Xcel argues that the request should be denied because it was submitted after the reconsideration period had closed. Furthermore, the declaration of my

amendment request as a petition for reconsideration would also establish the criteria by which my request would be judged.

My proposed amendment is not a request for reconsideration, but a suggested amendment to the permit to create a logical and mutually-beneficial shadow flicker mitigation plan based upon personal impact. When filed, this amendment possessed great importance because the permittee had not submitted its shadow flicker mitigation plan, even though it had been required, by the site permit, to do so well in advance of my June 8 request. In fact, the permittee did not submit a shadow flicker mitigation plan for over a month after my proposed amendment was filed.

During the July 16 Commission meeting, Mr. Rich Davis, of DOC-EERA, argued that Xcel's non-compliance was the result of the unique nature of this permit, and its absence was a minor oversight.¹ Mr. Davis described how the mitigation plan was already in place and that late submission simply represented a mere formality. This position differs from DOC-EERA's view during the discussion leading up to issuing the site permit. In the Commission's order of December 19, 2018, granting the site permit, the decision to include an official shadow flicker mitigation plan and have it submitted fourteen days before construction was a DOC-EERA proposal in response to findings from ALJ Schlatter.² It is confusing why the permittee's failure to comply with the portion of the permit had led to the DOC-EERA arguing that their very own recommendation can be ignored or, at the very least, be devalued.

By failing to comply with the permit, Xcel created a situation where the final nature of how shadow flicker would be mitigated was unknown. My proposed amendment resolved ambiguity regarding shadow flicker mitigation and protections for my home. The permittee should not be allowed to forego compliance measures and gain a form of protection through late filing. Doing so would create a perverse incentive for future permittees to limit the details in the mitigation plans until after the issuing of a site permit and then delay the filing of their mitigation

¹ PUC Agenda Meeting; July 16, 2020

² Site Permit; December 19, 2018, p 20 (Doc. No. 201812-148595-01)

plan until a point in the project where corrective steps would be harder to take and public comment impossible.

Also, my proposed amendment follows the guidelines of section 13.0 of the site permit:

"This permit may be amended at any time by the Commission in accordance with Minn. R. 7854.1300, subp. 2. *Any person may request an amendment of the conditions of this permit by submitting a request to the Commission in writing describing the amendment sought and the reasons for the amendment.* The Commission will mail notice of receipt of the request to the permittee. The Commission may amend the conditions after affording the Permittee and interested persons such process as is required."³

My proposed amendment is not challenging the issuing of the site permit, the site permit amendment granted to Xcel, or the findings of the Commission regarding the use of Xcel's shadow flicker data. My proposed amendment is limited in scope and is derived from the personal impact this project could have on my family and I. With Xcel's decision to change the turbine model being constructed near our home, our projected shadow flicker increased 10% even in the heavily reduced "realistic case" data Xcel is utilizing to make decisions (22 hour and 2 minutes in the original versus 24 hours and 15 minutes in the amended plan). The total "worse case," which better provides for possible annual deviations, comes out to be 63 hours and 31 minutes in the amended site plan. From the month of April until August, it is possible that up to 2.8% of the daytime hours, including every sunrise from the end of April thru the middle of August, will be impacted by shadow flicker. The prospect of starting every summer day with up to 45 minutes of shadow flicker is downright depressing.

This impact pushed me to propose an amendment that would not seek to revisit the whole site permit, but simply attempt to negate the personal effect that turbines 38 and 39 will have on my family's home feasibly for all parties. The steps proposed by my submitted amendment

³ Site Permit; December 19, 2018; Sec. 13.0 (Doc. No. 201812-148595-01)

request would have a negligible impact on the viability of the project both in terms of expediency of construction or long-term profitability. However, the steps could have a dramatic effect on my family's quality of life. Therefore, the permittee's argument that my proposed amendment be considered a motion to reconsider both to determine the legality of my amendment submission and the basis for judgment criteria should be disregarded.

2. Inadequacies of New Shadow Flicker Mitigation Plan

Now that the permittee has filed a shadow flicker mitigation plan, my amendment has even more relevance. The plan represents a new element that has received no public scrutiny but is being accepted into the permit without question. However, the updated plan produces new ambiguities and fails to address previous ones.

The plan makes clear that Xcel only recognizes three sites as having a valid claim towards shadow flicker compliance issues. These three sites are all participants. Most of the remaining sites that Xcel admits could have faced significant shadow flicker have had the impact eliminated by Xcel's decision to move seventeen turbines from London Township to Iowa to guarantee they complete construction in a timely manner and receive the full production tax credits they desire.⁴ (Xcel Response to AFCL Motion to Show Cause; July 10, 2020) However, the permittee touts their ability to eliminate shadow flicker for those non-participants. My proposed amendment is doing no more than requesting a set of conditions that would alleviate the same negative consequences for my family.

From the beginning of the project, my family and I have raised concerns about our potential exposure to excess shadow flicker and its potential disruption to our ability to enjoy our property to its fullest. The permittee has openly dismissed our concerns, and the Commission has elected to use the idea of the permittee's shadow mitigation plan and the complaint process in an effort to assuage our worries. With the filing of the NEW shadow mitigation flicker plan, our concerns are even greater.

⁴ Xcel Response to AFCL Motion to Show Cause; July 10, 2020 (Doc. No. 20207-164863-01 thru 20207-164863-05)

Xcel's July 14, 2020, Shadow Flicker Management Plan is concerning for its inability to resolve previous concerns of impacted landowners and creating a new discrepancy that could increase the burden on any citizens seeking mitigative action. Throughout the permitting process, Invenergy and Xcel have hinted that the mitigative steps they would employ would revolve around the use of blinds, awnings, and planting trees to minimize the visual impact of shadow flicker. The developers of this project have also advocated the homeowners travel during times of intense shadow flicker or not stay home. All of these proposed steps place the burden of mitigation on the impacted landowner.

From a personal standpoint, my family and I have no desire to change our home's aesthetic nature or property to block out negative impacts cast upon us by the permittee. Furthermore, the use of vegetation to minimize impact is a comical response as planting saplings would do nothing more than allow the company to claim it had resolved the issue. However, the reality would be that the impacted landowner would suffer years or decades of shadow flicker before the vegetation was of any size to have a significant impact on mitigating shadow flicker. The suggestion that my family vacation or abandon our home during times of flicker is both impractical and insulting. Is Xcel going to subsidize the time away from home? Even the shadow flicker modeling suggestion that flicker will be less of an issue to us because of the timing does not align with reality because my family will be home during the times of impact for they occur during the summer months, both sunrise and sunset, when my kids and I are not attending school (as students and a teacher).

While my objection is not new and has been raised throughout this process to both the Commission and the developers, I felt it necessary to be repeated here because it highlights the continued practice of permittee to claim its desire to work with impacted landowners, but only through proposed mitigative methods that contain little mitigative value, demand little financial commitment from the permittee, and would allow them to argue that complaints are being submitted only by unreasonable and obstructive citizens.

From the beginning of this process to now, the only true mitigative step offered by the permittee has been using turbine control software to limit the turbines' operational time during

shadow flicker periods. Under the new plan, Xcel has made it clear that this mitigative step will be used in a minimal manner and guided by financial considerations rather than the impact on landowners. In their shadow flicker management plan, Xcel states:

"Additionally, should other residents, who believe they are experiencing excessive flicker compared to the modeling, bring shadow flicker issues to the attention of Xcel Energy, the company will monitor and mitigate shadow flicker, as appropriate. However, *use of additional monitoring and control technology will be at the sole discretion of Xcel Energy based on customary engineering and operational considerations such as effectiveness, reliability, availability, cost, and maintainability.*"⁵

This plan makes it clear that an attempt by a landowner to gain the use of this turbine control technique to limit shadow flicker will be an uphill battle. Furthermore, Xcel's plan and the site permit conflict over who controls the initiation of shadow flicker monitoring with Xcel claiming "sole discretion" regarding monitoring and the permit granting the Commission the ability to order monitoring any time. Undoubtedly, the Commission and Xcel will agree that the Commission can order shadow flicker monitoring per the permit's wording.

More concerning, Xcel's management plan asserts that Xcel holds total control over the use of turbine control software to limit shadow flicker, and the permit has no wording to counteract this claim. It is reasonable to see, based upon Xcel's repeated claims that its securing of the site permit protects it from needing to engage with landowners on concerns, that shadow flicker mitigation, as currently designed in the permit, will rise to a level that will require Commission intervention both to secure monitoring and proper mitigation. Not attempting to avoid this future issue seems to be foolish both for the project and the Commission. Additionally, any impacted landowner faces an onerous process that could take years to reach its conclusion and represents an undue burden on an impacted landowner. Again, this argument is repeated from previous submissions by myself and other landowners in the project area but is now

⁵ Xcel Shadow Flicker Management Plan; July 14, 2020 (Doc. No. 20207-164893-01)

enhanced by Xcel's filing claiming sole discretion over shadow flicker monitoring and mitigation.

3. Additional Errors in Site Plans

My family's concerns regarding this project are generated not just from questions of process, but also from the continued inaccuracy of the project with regards to our property. Since the beginning of this project, my family and I have argued that the developers of this project have continued to present and analyze our property inaccurately. Initially, our home was entirely left off of site maps and documents. After multiple mentions of this via filings, our house was included on maps. However, no effort was made to determine the exact location of our home and the actual layout of our property. As recently as May 4, 2020, site plans for the project continue to depict our property as it was in 2015, more than two years before the submission of the initial application for this project. The layout in our property is considerably different now, including the demolition of various buildings and the construction of our home, which was completed in 2016. The failure to adequately represent our property continued to leave us questioning the analysis completed on how noise and shadow flicker could impact our home. It would be a great relief to my family and me to see Xcel finally show proof that they analyzed our property the way it is currently constructed and not based off of a Google Earth depiction from over half a decade ago.

4. Addressing Other Concerns from the Commission

After watching the July 16, 2020 Agenda meeting, it is clear that the Commission has significant concerns about any re-siting of turbines outside of Minnesota. Commissioner Tuma and Chairwoman Siebens expressed desires that the turbines remain in the state of Minnesota for the "good of the people."⁶ Chairwoman Siebens and Commissioner Tuma stated that re-siting turbines could have dire economic ramifications on the region. This an understandable argument, especially in this time of depressed economic activity with our nation's continued struggle with COVID-19. There is no denying that the on-going pandemic impacts our local economy negatively, but the local tax revenue from these two turbines is minuscule. The re-siting of these

⁶ PUC Agenda Meeting; July 16, 2020

two turbines would result in a loss of tax revenue equal to .025% of Freeborn County's 2019 FY revenue.⁷

A more significant question is the expediency of these taxes getting to the county to alleviate COVID-19 economic concerns. The schedule of Xcel's production tax payments has not been made public. It is reasonable to believe that a project taxed upon MWh may not be producing significant taxable production or have agreed to taxable output in its first year of operation. If it were desired that this project provide an immediate economic boost, it would be better to see that Xcel employed more local labor as requested by the International Union of Operating Engineers in their letter to the Commission back in May 2019.⁸ While many workers in the project area could be local, it is clear from the personal vehicles on sight that many of the positions, including project supervision, have been contracted to out-of-state workers ranging from Georgia to Utah.

5. Support for Re-Siting of Turbines 38 & 39

The central argument of my amendment is that the re-siting of turbines 38 and 39 presents the best way forward. By re-siting these turbines, the potential shadow flicker impact on my family would be reduced to a negligible amount. The need for other steps I discussed in my initial proposed amendment would be redundant.

The re-siting of turbines 38 and 39 would also lower the projected levels of noise on our property further away from the 47 dBA level. In other words, the re-siting of these two turbines would eliminate the concerns my family and I have from this project.

In my communication with Xcel, the permittee has stood fast that because they possess a permit, they are not required to work with us on this issue at all. They also maintain that the re-siting of turbines 38 and 39 is impossible because they are centrally-located, and the re-siting of

⁷ Freeborn County Annual Budget FY 2020, p. 121

⁸ Letter to PUC from International Union of Operating Engineers; May 30, 2019 (Doc. No. 20195-153242-01)

turbines is not possible at this late moment in the project.⁹ The statement regarding the central placement of turbines 38 and 39 is true, but their geographic location would argue more for their removal than their critical nature to the project. The two turbines are two of the three remaining turbines in London Township, a township described by Xcel as anything less than receptive to turbines.¹⁰ As for the turbines nature to the project, the turbines rest at the end of a connection line of three turbines with no connection to any other sites. The removal of these two turbines would not hamper the project from moving forward or require re-design. Instead, removing and re-siting would potentially even save costs due to the elimination of a small collection line and other related construction and land costs.

As for Xcel's argument that the re-siting of turbines is impossible at this time, we all understand that to be entirely dubious as they just submitted a plan to re-site seventeen turbines earlier this month. In that submission, Xcel identified more than two alternate sites in the plan. Mr. Lawler maintains that developing those sites requires extra preparation, but these sites appear on the amended site plan with all the same design components listed as approved sites. Furthermore, during the July 16, 2020 PUC meeting, Xcel admitted that moving those seventeen turbines to other sites represented an act of expedience, which seems to run counter to Mr. Lawler's claim that the re-siting of any turbine is too cumbersome in time and resources. In no way would the re-siting of turbines 38 and 39 place the viability of this project in doubt.

In many ways, the re-siting of turbines 38 and 39 represent the perfect "balancing" of all the interests in this project. By removing those turbines, around 95% of the projected shadow flicker that my family is expected to endure would be gone. The threat of exceeding the 30-hour threshold would be extinguished. The possibility that Xcel's shadow flicker modeling maybe "actually lower than those compared to actual results in the field" would be inconsequential.¹¹ Ultimately, this would make the chances of a compliance issue nil and save the Department of Commerce-EERA staff from additional oversight duties to add to their hefty workload. To the

⁹ Emails included with this filing

¹⁰ Xcel Response to AFCL Motion to Show Cause; July 10, 2020 (Doc. No. 20207-164863-01 thru 20207-164863-05), p 5.

¹¹ Initial Site Permit Application, June 14, 2017 (Doc. No. 20176-132804-01), p. 39.

Commission, it would make the odds of this issue appearing before them again almost non-existent, which undoubtedly is a concept that many of the Commissioners would wholeheartedly support while also serving to remind members of the community in which I live that we are included in the discussion of doing what is "good for the people." For Xcel, their project would have a potential complaint issue eliminated. The ability of their company to move forward expediently would not be hampered, the project's long-term interests would still be in place, and, arguably, more protected.

After review, my amendment should not be seen as some scattershot attack at the current project and the orders of the Commission. Instead, my request to remove turbines 38 and 39 in order to eliminate shadow flicker upon my property is a humble request that seeks to balance the interests of all parties involved. I ask that the Commission see my amendment as a reasonable and common-sense proposal aimed at resolving a specific issue by re-siting just two turbines.

Sincerely,

Sean Gaston