

Minnesota Public Utilities Commission

Staff Briefing Papers

Meeting Date: April 15, 2010.....**Agenda Item No. ★★7**

Company: Northern States Power Company d/b/a Xcel Energy

Docket Nos. E-002/M-09-1349 and 1350
In the Matter of Northern States Power Company d/b/a Xcel Energy's Request for Approval of Power Purchase Agreements with Goodhue Wind, LLC.

Issues: Should the Power Purchase Agreements be approved?

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Relevant Documents

Xcel Initial Filing	November 20, 2009
OES Procedural Proposal	December 2, 2009
Commission Notice	December 4, 2009
Commission Errata Notice	December 7, 2009
Paul Reese Comments	January 19, 2010
AWA Goodhue Comments	February 12, 2010
OES Comments	February 12, 2010
Goodhue Wind Truth Contested Case Petition	February 16, 2010
West Stevens Wind Comments	February 19, 2010
Danielson Wind Comments	February 19, 2010
Adams Wind Comments	February 19, 2010
Southwest Wind Comments	February 19, 2010
AWA Goodhue Reply Comments	February 22, 2010
Xcel Energy Reply Comments	February 22, 2010
National Wind	February 22, 2010
Carstensen Contracting	February 22, 2010
Xcel Amendment to PPAs	February 24, 2010
OES Comments	March 15, 2010
OES Reply Comments	March 29, 2010

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Statement of the Issue

Should the Power Purchase Agreements be approved?

In order to reach this question, the Commission must determine whether the Goodhue Wind project is a C-BED project.

Regardless of the C-BED determination, the Commission must also determine whether the Power Purchase Agreements are reasonable.

Background

Filings

On November 20, 2009, Xcel Energy filed petitions for approval of two Northern States Power Company (NSP) Power Purchase Agreements (PPAs): one with Goodhue Wind, LLC (“North”), Docket No. E-002/M-09-1349, and one with Goodhue Wind, LLC (“South”), Docket No. E-002/M-09-1350.¹ Xcel requested approval of these PPAs under the Minnesota Community-Based Energy Development (C-BED) statute: Minn. Stat. §216B.1612. Under this statute, if the Commission receives no objection to the approval of a PPA within thirty days of its filing, it is deemed approved.

(On October 15, 2009, Goodhue Wind, LLC had filed in Docket No. IP-6701/CN-09-1186 for a certificate of need for this project, which is a “large energy facility” under Minn. Stat. §216B.2421. On November 16, 2009, the Commission issued its *Order Extending Time Lines*, extending time for Commission action on the Company’s request for exemption from specific data requirements and for determining whether the certificate of need application is substantially complete.)

On December 2, 2009, the Office of Energy Security (OES) filed comments, including 9 attachments. The OES made three recommendations:

1. That the Commission take administrative notice in the PPA dockets of all of the public comments received to date in the Certificate of Need docket. (The 9 attachments to the OES comments are those public comments.)
2. That the Commission issue a notice of comment periods in the PPA dockets regarding whether the Goodhue facility is a reasonable and prudent approach to meeting NSP’s obligations under Minn. Stat. §216B.1691 [the Renewable

¹Goodhue Wind is a single wind electric generation development project. As proposed for evaluation, there will be two connections between the 78 MW project and the electric transmission system. Half the project (39MW) will connect to the north, and half to the south. Thus, two individual PPAs.

Energy Objectives and Standards statute], and meets the criteria established by Minn. Stat. §216B.243, subd. 9 for a Certificate of Need exemption.

3. That the Commission take no further action in the Certificate of Need docket until the issues regarding the PPA dockets are resolved.

On December 4, 2009, the Commission issued a *Notice of Receipt of Objection to Reasonableness of Proposed Power Purchase Agreements and Solicitation of Comment*. The Commission interpreted the OES comments as an objection to the approval of the PPAs within the thirty-day period, and stated that the PPAs would be considered as normal miscellaneous tariff filings. Together with an *Errata Notice* issued on December 7, 2009, the Commission requested comment on whether the proposed Power Purchase Agreements are reasonable. The Commission did *not* seek comment regarding Certificate of Need Issues.

The OES twice requested, and received, extensions of the deadline for comments. During this time, numerous comments in opposition to the project were received from individuals and an organization, Goodhue Wind Truth. From these documents, several different themes emerged:²

- Goodhue Wind, LLC and the Goodhue Wind project do not qualify for C-BED status. See, e.g., Paul Reese letter received January 19, 2010.
- Goodhue Wind, LLC has been secretive, and has submitted incorrect information. See Ann Buck letter received January 19, 2010.
- Projects that meet the statutory definition of C-BED have little to do with “community” and much to do with leveraging wind developer access to wind rights from landowners and money from investors. See Ryan letter received January 19, 2010.
- The project will take agricultural land out of production. See Morrissey letter received January 19, 2010.
- The project will negatively affect health and safety of nearby residents. See Morrissey letter received January 19, 2010.
- Property values will fall. See Stussy letter received January 19, 2010.

Letters were filed by M.A. Mortenson Company (on February 9, 2010) and Westwood Professional Services, Inc.(on February 12, 2010). Both stated that they were

²The letters referenced in this listing are meant only to be *representative* of the expressed view. They are not the only ones to express this view, and others may be more or less eloquent and may or may not provide more evidence to support the view.

Minnesota companies that had a history of successful wind development in the state and were supportive of the Goodhue Wind project.

On February 12, 2010, AWA Goodhue, LLC filed comments providing an update regarding project financing and addressing the project's C-BED eligibility and the reasonableness of the PPAs.

The OES also filed comments on February 12, 2010. It analyzed the PPAs with respect to:

- Whether the Project qualifies as a C-BED project;
- The price proposed to be paid by Xcel's ratepayers for the wind energy;
- Whether Xcel's ratepayers would be appropriately protected from the financial and operational risks of the wind project; and
- Whether the proposed curtailment provisions are appropriate.

The OES found the price to be paid under the PPAs to be similar to the prices paid in recently approved C-BED contracts. It found appropriate ratepayer protections from financial and operational risks, and it found that the proposed curtailment provisions are appropriate. (In comments filed the same day in the Certificate of Need docket, the OES implied that *any* C-BED price may be higher than reasonable.)

Although in all previous C-BED projects the OES has issued a letter confirming that the project qualifies as a C-BED project, it said it has not and will not issue such a letter in this case, preferring that the Commission make this decision. In its analysis of whether the project qualifies as a C-BED project, the OES raised the question of whether, in the statute, the term "other local entities" means "more local than located within Minnesota."³ While it did not answer this question, it proposed a possible weighting scheme in which revenues going to entities within the project county would count 100 percent, those in adjacent counties would count 75 percent, and those in Minnesota but not in either of the former would count 50 percent.

On February 16, 2010, Goodhue Wind Truth filed a request for the Commission to hold a contested case hearing.

³Under the statute, at least 51% of the project gross revenues must go to "qualifying owners and other local entities." The OES's proposed weighting scheme reduces the revenues that can be counted toward this goal, making it more difficult for a project to qualify as a C-BED project.

On February 18, 2010, Xcel filed a corrected copy of its initial filing, saying that the November 20 petition incorrectly stated that the project interconnection agreement has been completed and that a miscellaneous editing error needs to be corrected.

On February 19, 2010, comments (or reply comments) were filed individually by West Stevens Wind, Danielson Wind Farm, LLC, Adams Wind Generation, LLC, and Southwest Wind Consulting, LLC. Three of these—Danielson, Adams, and Southwest Wind—stated that they were C-BED projects that had received letters from the OES certifying their projects. Each said the OES had given 100 percent credit for the flow of gross revenues from the PPA to the “other local entities” regardless of where the entity was located within the state. Each stated that this allocation was critical in approving the project as a C-BED project. West Stevens Wind said the OES will in the future review its project, and that it is critical that 100 percent credit is given to “other local entities” regardless of where they exist in the state.

On February 22, 2010, reply comments were received from AWA Goodhue, LLC, Carstensen Contracting, Inc., National Wind, LLC, and Xcel Energy. Initial comments were filed by Rick Conrad.

Between February 22, 2010 and February 26, 2010, the Commission received approximately 200 letters from individuals associated with C-BED projects throughout Minnesota, arguing in opposition to any interpretation of the C-BED statute that would limit the applicability of “other local entities” beyond being Minnesota companies.⁴ These letters made the following points:

- The writer is a participant in a C-BED project that has been underway for several years.
- The OES proposal regarding C-BED eligibility would likely disqualify the writer’s project.
- The OES proposal is not a change in the law, but is a change in its interpretation.
- The project has received a resolution of support from the County Board, and has always anticipated it would qualify as a C-BED project.
- It is unfair to change the rules for evaluation of C-BED eligibility at this time.
- Implementing the OES proposal could have a significant negative impact on the project.

⁴These locations or projects were identified: Big Stone County, Dodge and Olmstead Counties, Fillmore and Mower Counties, High Country Energy, Lake Country Energy, Little Rock Wind, Meeker and Kandiyohi Counties, Norfolk Wind Energy, Renville County, and Root River Energy.

- The economic impact on the community of implementing the OES proposal could be devastating.

On February 24, 2010, Xcel filed an amendment to the PPAs. The amendment addressed four issues:

1. NSP's consent to the assignment of the PPAs from GW Community Holdings to AWA Goodhue, LLC.
2. Providing for the Commission to confirm C-BED status for the project.
3. Extending by 60 days the time for the Commission to approve the PPAs before NSP has the right to terminate them.
4. Extending the Commercial Operation Date.

The Commission issued a notice soliciting comment on the amendment on February 26, 2010.

On March 15, 2010, the OES submitted comments stating it had no objection to the amendment.

On March 29, 2010, the date established for reply comments regarding the PPA amendment, the OES filed one set of reply comments relating both to whether the Commission should approve the PPAs in Dockets 09-1349 and 1350, and to whether the Commission should grant a Certificate of Need in Docket 09-1186.

Statute

Minn. Stat. §216B.1612, subd. 1 provides the purpose of the statute:⁵

A tariff shall be established to optimize local, regional, and state benefits from renewable energy development and to facilitate widespread development of community-based renewable energy projects throughout Minnesota.

Minn. Stat. §216.1612, subd. 2 (g) sets forth the criteria defining a C-BED project as a new renewable energy project that:

(1) has no single qualifying owner owning more than 15 percent of a C-BED wind energy project unless: (i) the C-BED wind energy project consists of only one or two turbines; or (ii) the qualifying owner is a

⁵Pending legislation (SF3081) would make a number of changes to the C-BED statute, including to subdivisions in question in this docket.

public entity listed under paragraph (c), clause (5), that is not a municipal utility;

(2) demonstrates that at least 51 percent of the gross revenues from a power purchase agreement over the life of the project will flow to qualifying owners and other local entities; and

(3) has a resolution of support adopted by the county board of each county in which the project is to be located, or in the case of a project located within the boundaries of a reservation, the tribal council for that reservation.

A “qualifying owner” means (Minn. Stat. §216B.1612, subd. 2 (c)):

1) a Minnesota resident;

(2) a limited liability company that is organized under chapter 322B and that is made up of members who are Minnesota residents;

(3) a Minnesota nonprofit organization organized under chapter 317A;

(4) a Minnesota cooperative association organized under chapter 308A or 308B, including a rural electric cooperative association or a generation and transmission cooperative on behalf of and at the request of a member distribution utility;

(5) a Minnesota political subdivision or local government including, but not limited to, a municipal electric utility, or a municipal power agency on behalf of and at the request of a member distribution utility; the office of the commissioner of Iron Range resources and rehabilitation; a county, statutory or home rule charter city, town, school district, or public or private higher education institution; or any other local or regional governmental organization such as a board, commission, or association; or

(6) a tribal council.

Positions of the Parties

Office of Energy Security

As stated above, the OES reviewed the PPAs with respect to price, ratepayer protection from financial and operational risks, the appropriateness of the curtailment provisions, and C-BED eligibility.

With respect to price, the OES said that in the Goodhue project, Xcel is pursuing the most cost-effective C-BED resources available to the Company. The OES said if the Commission determines the project does not qualify as a C-BED project, the Commission must look to OES comments in the Certificate of Need Docket (Docket No. IP6701/CN-09-1186) for an analysis regarding the cost of the proposed project compared to non C-BED options.⁶

The OES said the PPAs appropriately protect Xcel's ratepayers from financial and operational risks, and that they have appropriate curtailment provisions. The OES also said the terms of these PPAs are similar to other PPAs filed under the C-BED tariff between Xcel and various C-BED projects.

Again, as stated above, with respect to C-BED eligibility, the OES decided to leave the determination up to the Commission. It did, however, provide an analysis of the first two eligibility requirements. It concluded that, at this time, no single qualifying owner owns more than 15 percent of the project, so that Minn. Stat. §216B.1612, subd. 2 (g) (1) is satisfied.

For Minn. Stat. §216B.1612, subd. 2 (g) (2), the OES first examined the revenues that would flow to qualifying owners, and determined that that flow, in the 20 years the PPAs are to be in effect, would cover less than 51% of the gross revenues. To see whether the project would qualify, it was therefore necessary to add to that amount the flow of payments to "other local entities." Most of the entities identified by Goodhue Wind are located in Minnesota but outside of Goodhue County. Thus, according to the OES, "... to assess whether the project meets this statutory requirement, it is necessary for the Commission to interpret what the phrase 'local entities' means in the statute."

The OES continued:

The OES notes that the statute does not define "local entities" nor is the term defined elsewhere in Chapter 216B. However, the OES notes that subdivision 1 of Minn. Stat. §216B.1612 provides:

A tariff shall be established to optimize local, regional, and state benefits from renewable energy development and to facilitate widespread development of community-based renewable energy projects throughout Minnesota.

Thus, in Subdivision 1, the statute differentiates between local, regional, and state benefits. One way for the Commission to address this

⁶Staff has done that—the OES there said the non-C-BED price is unreasonably high. See page 9 of OES Public Comments in Docket 09-1186, filed February 12, 2010.

matter is to decide what weights to give to the three categories of benefits: local, regional and state. Weighting benefits allows for a greater value on revenues flowing to entities located within the same county as a proposed project. That value diminishes when an entity is located further away from a proposed project but still in Minnesota. One possible weighting scheme would be to assign full weight to revenue flowing to entities located in the same county and [sic] the proposed Project, 75 percent of revenue flowing to entities located in adjacent counties, and 50 percent of revenue flowing to other entities located in Minnesota . . .

Because a significant amount of the benefits would flow to entities which are not in or near Goodhue County or adjacent counties (which would include Dakota), the Project would not meet this statutory requirement unless the Commission gave nearly full weight to “local entities” located anywhere in Minnesota. That is, in order for the Project to qualify for this aspect of the definition of a C-BED Project, a broad interpretation of the term “local entities” would be necessary.

The OES concluded that, for the proposed project to qualify as a C-BED project, entities outside of Goodhue and adjacent counties would need to be included as “local entities.” If the Goodhue Wind project does qualify, the OES concluded that Xcel is pursuing the most cost-effective C-BED resources available to the Company at this time. Further, Xcel’s ratepayers would be appropriately protected from the financial and operations risks of the PPAs and the curtailment provisions of the PPAs are appropriate.

It recommended that the Commission consider:

- The OES’s and other parties’ comments on the interpretation of the term “local entities” as used in Minn. Stat. §216B.1612.
- The OES’s and other parties’ comments in the Certificate of Need proceeding.
- If the Commission determines the project qualifies as a C-BED project, the OES comments in the CN docket comparing C-BED and non-C-BED projects.
- If the Commission determines the project does not qualify as a C-BED project, the OES comments in the CN docket comparing the proposed Project to non-C-BED projects.

In its reply comments, the OES identified three options for Commission consideration in interpreting “local entities:”

1. If “local” means benefits anywhere in Minnesota, then the Commission should apply equal weights to benefits to all Minnesota entities receiving benefits. (AWA Goodhue interpretation)
2. If “local” means benefits only to the entities closest to Goodhue County, then the Commission should give weights of zero for benefits accruing to entities located outside of an area near Goodhue County, which may include surrounding counties. (Interpretation by local landowners who are not part of the project)
3. If “local” means that benefits anywhere in Minnesota count but benefits closer to the project count more, then the Commission should adjust the weights according to the relative benefits in greater Minnesota and in the local community. (Generic model)

The OES said use of the word “other” provides little guidance on the Legislature’s intended meaning of the word “local.”

The OES argued that because “qualifying owners” are restricted from owning more than 15% of a C-BED project, it is difficult to reconcile the specificity of that criterion with the breadth of AWA Goodhue’s interpretation of the term “local entities,” when the only resulting “benefit” of qualifying as a “qualifying owner” is further restriction of ownership to no more than 15% of the project. That interpretation would mean, “. . . that an LLC that has members in another state, or a Minnesota corporation with shareholders potentially located around the world would be considered to be equal to a qualifying owner when determining whether the project meets the provision that 51 percent of revenues from the PPA must flow to qualifying owners and other local entities.”

The OES also looked at Minn. Stat. §216B.1612, subd. 7 (c):

A qualifying owner, or any combination of qualifying owners, may develop a joint venture project with a nonqualifying renewable energy project developer. However, the terms of the C-BED tariff may only apply to the portion of the energy production of the total project that is directly proportional to the equity share of the project owned by the qualifying owners.

The OES said that, while it does not interpret this section this way, at least one member of the public, Paul Reese, interpreted this provision as limiting the portion of a proposed project that qualifies as C-BED to the percentage of equity share of the project owned by qualifying owners.

The OES corrected a table included in its comments in the 09-1186 docket that reduced the premium the OES said Xcel was paying for C-BED power over what it would cost for Xcel to own the generation itself. Nevertheless, a premium still existed, and the OES said that it may be unreasonable to approve the PPAs, even though these PPAs represent “the most cost-effective C-BED power available.”

Finally, the OES included a lengthy recommendation, covering both the CoN and PPA dockets:

If the Commission determines that the AWAG’s project is C-BED and that it has a minimal impact on rates, the OES recommends the Commission:

- approve the PPAs;
- approve the CN;
- require Xcel to provide, in 60 days, a filing showing how Xcel will fully comply with the Commission’s Target Order and abide by the commitments Xcel made in that Order. At a minimum, this filing should discuss an all-source renewable bidding process, where C-BED, non-C-BED and utility-owned projects would compete with each other to set out the least-cost ways to meet the Minnesota RES. The petition should also explain how Xcel intends to balance the appropriate factors of Minnesota Statutes §§216B.1691, subd. 10 and 216B.1612, subd. 5:
 - promoting rural economic development;
 - reliability;
 - minimizing cost; and
 - acquiring CBED projects at a minimal cost impact; and
- require Xcel to provide, in the Company’s PPA petitions an estimate of the premium for C-BED petitions based on a comparison of the proposed C-BED price to the Xcel’s own high end estimate of the levelized cost of Xcel’s Nobles project used in OES’s cost comparison as presented in Table 1 above. This information should be updated when the results of a competitive bidding process is known.

If the Commission determines that AWAG’s project is not C-BED or that it does not have a minimal impact on rates, the OES recommends the Commission:

- reject the PPAs;
- reject the CN without prejudice;
- require Xcel to provide, in 60 days, a filing showing how Xcel will fully comply with the Commission's Target Order and abide by the commitments Xcel made in that Order. At a minimum, this filing should discuss an all-source renewable bidding process, where C-BED, non-C-BED and utility-owned projects would compete with each other to set out the least-cost ways to meet the Minnesota RES. The petition should also explain how Xcel intends to balance the appropriate factors of Minnesota Statutes §§216B.1691, subd. 10 and 216B.1612, subd. 5:
 - promoting rural economic development;
 - reliability;
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- require Xcel to provide, in the Company's PPA petitions an estimate of the premium for C-BED petitions based on a comparison of the proposed C-BED price to the Xcel's own high end estimate of the levelized cost of Xcel's Nobles project used in OES's cost comparison as presented in Table 1 above. This information should be updated when the results of a competitive bidding process is known.

AWA Goodhue, LLC

AWA Goodhue filed both comments and reply comments. In its comments, it explained that Goodhue Wind, LLC (the entity which signed the PPAs with NSP) had first changed its name to GW Community Holdings, LLC, and then entered into an agreement with American Wind Alliance, LLC, an independent power producer that will be the equity partner for the project. The agreement formed AWA Goodhue, LLC. The project's assets, including the PPAs, are transferred to AWA Goodhue.

AWA Goodhue then reviewed the project with respect to the statutory definition of a C-BED project. To begin, it demonstrated that it is employing the "flip" model, in which the relative equity interests in the project will change over the project's lifetime. During the initial term, American Wind Alliance will own a

majority and qualifying owners will own a minority of the equity interests. On a specified date, qualifying owners have a right to purchase the project, thereby triggering a flip in the respective ownership interests so that qualifying owners will own a majority of the equity interests. The flip model has been accepted in prior C-BED projects and has been considered the “norm” by the OES. Under the flip model, no “qualifying owner” owns more than 15% of the project—thus satisfying subd. 2 (g) (1) of the statute.

AWA Goodhue said PPA revenue from the project will be distributed to qualifying owners and local entities in the form of landowner lease payments, development fees, management fees, taxes, financing fees and interest, fees to Minnesota-based consultants and service providers, fees paid to Minnesota-based construction companies and fees paid to local persons providing ongoing operation and maintenance. In total, approximately 58% of the total revenues from the PPAs are projected to flow to qualifying owners and other local entities during the term of the PPAs. This exceeds the minimum 51% gross revenue flow set forth in subd. 2 (g) (2) of the statute.

AWA Goodhue noted that Exhibit H of the PPAs is a resolution of support adopted by Goodhue County, in satisfaction of subd. 2 (g) (3) of the statute.

AWA Goodhue said Xcel selected the Goodhue project after an extensive Request for Proposal process, ensuring, as far as possible, that Xcel and its ratepayers would receive C-BED renewable energy at a competitive and reasonable price. AWA Goodhue observed that the PPAs contain several important ratepayer protections that reduce the financial and operational risks to Xcel’s ratepayers, and that the curtailment risk to Xcel and its ratepayers is minimized in the PPAs. It asked the Commission to find the PPAs reasonable and approve them.

In its reply comments, AWA Goodhue addressed three issues: whether the Goodhue project qualifies as a C-BED project, the reasonableness of the price in the PPAs, and Goodhue Wind Truth’s request for a contested case.

AWA Goodhue said the C-BED statute is designed to retain a majority of the PPA revenues flowing from C-BED projects within Minnesota. It was not intended to artificially limit benefits to a single county or small geographic area. AWA said the C-BED theory is simple: communities impacted by energy projects should be given opportunities to share in the project’s economic benefits. Because Minnesota law gives priority to C-BED projects, utilities need a mechanism to assure that projects they negotiate PPAs with qualify as C-BED. This certainty has been attained by project developers obtaining C-BED qualification letters issued by the OES. The OES has *always* given equal credit for gross revenues flowing to both “qualifying owners” and “other local entities;” that is, as long as the gross

revenues were being distributed to any resident or firm located anywhere in Minnesota, the OES has consistently given each dollar of gross revenue its full value when applied against the 51 percent minimum.

Here, for the first time, and without explanation, the OES abandoned that practice, asserting instead there is ambiguity regarding how a project should satisfy the 51 percent standard. It suggested that the Commission consider applying its newly proposed “weighting” scheme.

AWA Goodhue said it is both puzzled and disturbed by the OES’s departure from its practice, and urged the Commission not to adopt it. AWA Goodhue said by its plain terms, the statute requires that credit for gross PPA revenues be given equally to service providers located anywhere in Minnesota. The statute does not require, or even contemplate, that credit be dependent on a service provider’s geographical proximity to a C-BED project. The statutory phrase is “qualifying owners and other local entities.” Use of the word *other* implies that “local entities” are local in the same sense that “qualifying owners” are local. What sense is that? That they are Minnesota residents and companies made up of members who are Minnesota residents. Thus there is no legal ambiguity from the statute—“other local entities” means others in Minnesota.

AWA Goodhue continued, saying neither is there any factual ambiguity that warrants this project receiving significantly different treatment than all other previously-approved C-BED projects. AWA Goodhue closely tracked past C-BED practice in structuring its project and that practice has *never* required that the project work or services be undertaken by residents or entities *physically* located within or adjacent to the project footprint, or that otherwise weights one Minnesota county over another. Had it wanted to, the Legislature could have created such a scheme. It did not.

AWA Goodhue said that interpreting the C-BED statute to exclude residents and service providers who may not be located adjacent to a C-BED project is inconsistent with the statute’s intent. The Legislature did not intend to pick winners or losers based on geography within the state. Adoption of a weighting criterion would severely limit, not enhance, the circle of Minnesota residents and service providers eligible to share in the revenues from C-BED projects. Capital, expertise, and resources to develop wind projects are not uniformly distributed among Minnesota counties, and many, if not most counties cannot do wind development with resources located exclusively within their borders. The Legislature’s intent was not to shut out residents and firms from C-BED projects’ economic opportunities, but to provide equal opportunity for persons throughout the state.

AWA Goodhue said the OES’s proposal of a new weighting scale violates ac-

cepted norms of administrative law, because agencies are required to conform to their prior norms or explain the reason for departing from them. The OES provided no such explanation for the change it proposed. It failed to provide any facts or circumstances that distinguish this project from other similarly-situated, previously-approved C-BED projects, or that otherwise justify its departure from its precedent. If applied, the OES's new scheme will cause AWA Goodhue substantial economic harm and deprive it of its due process rights.

With respect to the price in the contracts, AWA Goodhue said the C-BED and non-C-BED rates are reasonable. In comments filed in the Certificate of Need docket (09-1186), the OES recommended that the Commission *deny* the CoN application if the project is not C-BED because the price in the PPA appears to exceed the cost if Xcel were to build and own the project. To the contrary, the price in the PPAs is reasonable regardless of whether the project is or is not C-BED.

AWA Goodhue said it is illogical that the OES found the price reasonable in these PPA dockets as long as the project is C-BED, but found the *lower* non-C-BED price to be unreasonably high in the CoN docket. The non-C-BED price in the PPAs is the product of a contractual formula found in all Xcel PPAs. In at least two other recent dockets, the OES recommended, and the Commission approved, PPAs with C-BED rates that were not materially different from the pricing in these. Those approved PPAs also contained *identical* fallback provisions, reducing the rate in the event the project no longer qualifies as C-BED. Where similar PPA *C-BED rates* are found reasonable, the *non-C-BED* rates resulting from the *identical fallback formula* should likewise be found reasonable.

AWA Goodhue said there is no legal or policy rationale that requires comparing the costs of this wind project to the costs of one owned and operated by a vertically integrated utility company. The Commission has made it clear that Xcel is required to include a balanced portfolio of utility-owned, Independent Power Producer, and C-BED projects to meet its RES. Last June, the Commission concluded that Xcel's best approach is to acquire one-third of its renewable resources through C-BED, one-third through non-C-BED IPP purchases, and one-third through utility ownership.⁷

If the non-C-BED price of these PPAs were an outlier, well outside the market price for wind energy, the OES's position might be understandable. But the non-C-BED rate here is not higher than a non-C-BED rate recently approved by the Commission.

⁷See *Order Approving Target Portfolio Allocation Within Xcel's Renewable Energy Plan*, Docket No. E-002/M-07-1558, June 19, 2009.

AWA Goodhue said the OES's conclusion that the project's non-C-BED rate is above market seems, like the suggested weighting scheme, wholly arbitrary. The OES provides no criteria or quantitative methodology for concluding a rate is "in the market" while another isn't. There is no principled explanation.

AWA Goodhue said the Commission should be extremely hesitant to deny approval of the PPAs based on this issue alone. Xcel executed them after a robust, transparent RFP process and after lengthy negotiations. Many factors, including cost of capital, commodity prices, risk profiles, transmission costs, curtailment risk, and ability to monetize federal incentives, were weighed in developing the PPAs, but, apparently, not by the OES. Because the price here was a result of a fair transparent process, the Commission should be particularly reticent to reject this project.

With respect to Goodhue Wind Truth's request for a contested case, AWA Goodhue said that Goodhue Wind Truth had identified no facts in dispute that would require such a proceeding. GWT asked the Commission to look at a 2008 prospectus, apparently to substantiate its statement that the "project is not a C-BED project." However, that prospectus has been withdrawn, and any and all information in it is *irrelevant* to the current project. *Relevant* facts have been disclosed to the OES and the OES is not disputing them. The *only open issue* related to C-BED eligibility rests on the correct determination of Minn. Stat. §216B.1612, subd. 2 (g) (2). This is a legal, not factual, question, for which a contested case is not necessary.

AWA Goodhue concluded its reply comments by asking the Commission to:

1. Qualify the Goodhue project as C-BED eligible under Minn. Stat. §216B.1612;
2. Approve the Xcel/Goodhue PPAs as reasonable; and
3. Deny GWT's request for a contested case.

National Wind

National Wind said it is a Minnesota-based developer of utility-scale community owned wind farms. It has helped structure six Minnesota wind projects, including the Goodhue project. These projects were structured in reliance on the long-standing application of the C-BED statute and OES's application of the statute to other C-BED projects. A change in the definition of "other local entities" could invalidate these projects from qualifying as C-BED projects. Thus, National Wind opposes any change in the definition of "other local entities" and the new criteria created by the OES.

National Wind said that Minnesota has several construction companies, financial institutions, developers, and other vendors with wind farm experience, but these vendors are not geographically distributed evenly across the state. Historically, the OES has given full credit for utilizing Minnesota-based companies in development of C-BED projects. As a practical matter, if the Commission departs from the historical analysis of the OES, the Goodhue project will not qualify as a C-BED project. Furthermore, if the new standard to define “other local entity” is adopted by the Commission, National Wind thinks it unlikely that any project will meet the C-BED criteria. Only those in a county where significant investment capital, experienced construction companies, developers, engineering firms, financial institutions and other vendors are located could qualify. Perhaps projects in the metropolitan area may remain eligible. This is contrary to the intent of the C-BED statute.

National Wind asked the Commission to consider the impact of its decision on National Wind’s C-Bed projects. For all six projects taken together:

- 1,368 MW of C-BED projects will be built over the next seven years;
- The projects include 480 Minnesota investors who have invested significant dollars to develop the projects;
- The projects include over 600 participating land owners;
- National Wind predicts \$135,000,000 of project distributions to Minnesota investors over the life of the combined projects;
- National Wind predicts \$350,000,000 of payments to Minnesota participation landowners on a combined basis over the life of the projects;
- The total capital construction cost should average about \$460,000,000 a year, of which over 51% will benefit Minnesotans;
- National Wind estimates annual Minnesota production tax revenue, once all projects are built, of \$5,500,000 a year, or \$110,000,000 over the life of the projects;
- National Wind estimates 648 direct Minnesota temporary construction jobs, from our combined projects; and
- National Wind estimates 356 Minnesota direct permanent jobs for the combined projects once fully constructed.

This information is representative of National Wind’s C-BED projects. There are several other Minnesota developers that would be similarly affected.

National Wind concluded that it is important to continue to define “other local entities” to include all Minnesota-based business providing services to the Goodhue wind project. The legislature intended to benefit the state of Minnesota when it enacted the C-BED legislation. National Wind urged the Commission to retain the existing definition of “other local entities” and not take a position that nullifies the C-BED statute.

Carstensen Contracting, Inc.

Carstensen is a Minnesota-based company located in Pipestone, whose primary business is the construction of wind energy projects. Carstensen has constructed several C-BED projects in Minnesota, and strives to use local suppliers, labor, and subcontractors whenever possible. Often local resources are not available, or lack the skills, equipment, and size to complete wind energy projects. In areas where limited competition exists, Carstensen has experienced increased project costs and stifled future development. The Goodhue project has engaged many Minnesota contractors located throughout the state; most, like Carstensen, are “local entities” that are not based in the county where the project is located or in adjacent counties. The allocation of full credit to “local entities” throughout Minnesota is critical in approving projects as C-BED projects. It is appropriate to continue to define “local entities” to include all Minnesota-based businesses providing services to current and future C-BED projects.

Xcel Energy, Inc.

With respect to the Goodhue project’s C-BED eligibility, Xcel said the OES and the Commission are the appropriate arbiters of what meets the statutory definition. Xcel selects C-BED projects through competitive bidding, and does not have access to the specific information necessary to analyze and determine a developer’s C-BED qualifications. Xcel remains committed to the project as a C-BED project and hopes the question of eligibility can be resolved soon enough to accomplish project construction this year. Xcel said this question does not lend itself to a contested case fact finding; rather, the Commission is asked to interpret the C-BED statute given the present ownership structure and past precedent. Xcel submitted a PPA amendment that contemplates the Commission, not the OES, making the C-BED eligibility decision, extends timelines for the commercial operation date and condition precedent, and accepts the assignment of the PPAs to AWA Goodhue.

Xcel agreed with the OES conclusion that the Goodhue project, as a C-BED project, is the most cost-effective resource of that type available at this time. If

the Commission should find the project does not qualify as a C-BED project, it should grant parties additional time to address the non-C-BED cost comparison issue as part of the CoN docket.

Xcel said it fully agrees with and appreciates the OES conclusions about ratepayer protections from financial and operational risks, as well as the recommendation for approval of the curtailment provisions.

In conclusion, Xcel said if the Commission determines the Goodhue project is a C-BED project, then it asked approval of the PPA petitions. If not, it requested further development of the record in the CoN docket.

Staff Analysis

In these dockets, the Commission is asked to review and approve (or reject) two Power Purchase Agreements between NSP and AWA Goodhue. They were submitted as C-BED PPAs, which ordinarily would be automatically approved after thirty days. In this case, however, the Commission interpreted the OES's December 2, 2010 letter as an objection that derailed the automatic approval. Instead, the Commission is considering these as ordinary miscellaneous tariff filings.

Goodhue Wind Truth requested a contested case hearing. Staff thinks that the issues of C-BED eligibility and reasonableness of the PPAs that are central in these two dockets are matters for resolution by statutory interpretation and policy choices, not involving disputed issues of material fact. Staff therefore recommends the Commission not begin a contested case for resolution of these issues.

Staff observes that Xcel's proposed amendment drew no opposition, and recommends that the Commission approve it.

C-BED Classification

In all previous C-BED applications, the OES has made a determination that the project fits the statutory definition of a C-BED project. This determination is necessary because Minnesota law expresses a preference for utilities to purchase renewable energy from C-BED projects over other projects, if C-BED projects are available under reasonable terms. The determination by a state agency enables utilities to have confidence that their purchases under the PPA will count toward state mandates.

Despite the importance of that determination, the statute is silent on who makes it or how it is made. While it has become apparent in this proceeding that the OES has been providing letters certifying the projects, those letters have not been filed

in the corresponding PPA dockets, and staff is not aware of how they may be accessed in the E-Docket system of the Commission and the Department of Commerce. Based on the examples provided in the AWA Goodhue reply comments and the comments of C-BED project participants, staff thinks it most probable that the OES has, in all previous cases, determined explicitly or implicitly that “other local entities” meant “other Minnesota entities.”

Here, the OES said it has not and will not make that determination. It said the statute is ambiguous, and that the decision resolving the ambiguity should be made by the Commission. The OES also presented the Commission with a “weighting scheme” as a possible method of interpreting statutory language.

The statute in question is Minn. Stat. §216B.1612, subd. 2 (g). It defines a C-BED project as a new renewable energy project that:

- (1) has no single qualifying owner owning more than 15 percent of a C-BED wind energy project unless: (i) the C-BED wind energy project consists of only one or two turbines; or (ii) the qualifying owner is a public entity listed under paragraph (c), clause (5), that is not a municipal utility;
- (2) demonstrates that at least 51 percent of the gross revenues from a power purchase agreement over the life of the project will flow to qualifying owners and other local entities; and
- (3) has a resolution of support adopted by the county board of each county in which the project is to be located, or in the case of a project located within the boundaries of a reservation, the tribal council for that reservation.

Goodhue Wind Truth seems to believe that the Goodhue project fails the first of these tests. It submitted a 2008 prospectus as the apparent support for that position. However, that prospectus does not describe the project as it is currently structured. Currently, American Wind Alliance is the majority owner of the project. It is not a qualifying owner, as it is not a Minnesota limited liability company. None of the actual qualifying owners owns more than 15 percent of the project, as attested by the OES. Thus, the project satisfies the first test.

The third test is satisfied by a December 4, 2008 resolution of the Goodhue County Board of Commissioners, supporting development of the Goodhue Wind Energy Project as a C-BED project. This resolution of support was submitted as Exhibit H to the PPAs.

So the question whether the Goodhue Project is a C-BED project turns on the second statutory test: Do at least 51% of the gross revenues flow to “qualifying owners and other local entities?” As shown by the OES, revenues to the qualifying owners alone do not total 51% of the total. Therefore, it is necessary to count as well the payments made to “other local entities.” If the sum is greater than 51%, then the project qualifies as a C-BED project.

The OES proposed, for the first time, that the Commission decide what constitutes “other local entities,” and proposed that the Commission evaluate a weighting system in which entities within the county of the project have 100% of revenues counted; those in adjacent counties have 75% of revenues counted, and all others in Minnesota have 50% of revenues counted toward the test.

The OES is certainly correct in saying “. . . this is the first time the question of what qualifies a project to meet the statutory C-BED requirements has come before the Commission.” But the OES neglected to say that the OES itself had apparently addressed the question of what constitutes “other local entities” many times in the past, consistently providing the answer of “entities in Minnesota.” It is odd that the issue is presented as one of first impression. It is even more odd that the OES’s consistent resolution of the issue wasn’t even explored as an alternative in the OES’s initial comments. Rather, the OES proposed a new interpretation, one which (at least according to AWA Goodhue) requires something of a stretch in reading the statute, and under which neither this project nor most, if not all others to date would qualify.

The OES provided no explanation of how it had previously resolved the question, let alone any discussion of what made that resolution incorrect. Neither did it discuss any way in which the Goodhue project differs from other projects it had found complied with the statute.

In fact, the OES and AWA Goodhue agreed that if “other local entities” means “entities within Minnesota,” as it apparently has in all C-BED evaluations done by the OES⁸, then approximately 58%⁹ of the project’s gross revenues flow to “qualifying owners and other local entities,” and the Goodhue project meets the full statutory definition of a C-BED project.

⁸At least since the current statutory language was adopted in 2007.

⁹Staff did not find this statement in the OES comments, but asserts that 58% is the result (after rounding) of adding two trade secret figures that are found in the OES comments: one representing gross revenues flowing to qualifying owners, and one representing gross revenues received by other local entities (in the broad definition). AWA Goodhue said, “. . . approximately 58% of the total revenues from the PPAs are projected to flow to qualifying owners and other local entities during the term of the PPAs . . .” in its public comments.

In contrast to the OES, staff thinks there is little ambiguity in the term “other local entities,” and thinks the interpretation “other entities in Minnesota” holds up well under several different evaluation criteria.

A good place to start is the language of the phrase itself: *qualifying owners and other local entities*. To understand the importance of the word “other,” read the phrase without it: *qualifying owners and local entities*. It is clear that “other” establishes a commonality between “qualifying owners” and “local entities.” What *other* makes common is *local*. And what defines “qualifying owners” as *local* is their location in Minnesota. While it may (sometimes) be the case that the qualifying owners are located close to the project, and while the public may expect that qualifying owners will, in that sense, be *local*, the statute is clear that owners qualify (locationally) by being in Minnesota, with no further spatial requirement.¹⁰ It follows that the most reasonable reading of the statute, in a grammatical sense, is that “other local entities” refers to entities in Minnesota.

The OES invited us to review Minn. Stat. §216B.1612, subd. 1, pointing out the language of “. . . local, regional, and state” to illustrate that *local* necessarily means something less than *state*. Staff sees two problems with this interpretation. First, the only reason to review this language is that the word *local* is used both here and in subd. 2 (g) (2). Subd. 1 is not a definition of *local*, and the meaning of *local* is dependent on context: an itch may be local to a mosquito bite on an arm, while a political party might be local to a nation state. Subd. 1 simply uses *local* in a very common (almost trite) expression—*local, regional, and state*. The expression does not distinguish these levels—no criteria for categorizing distances are presented. Rather, the expression sets a common goal, that of optimizing benefits. The OES, on the other had, wants to use the levels divisively, where local is preferred to regional which is preferred to state. That cannot be read here.

The second problem with this reference is related to the first. The purpose of the statute is expressed right here in subd. 1, and the purpose is clear—to optimize benefits and facilitate widespread development of C-BED projects throughout Minnesota. The OES’s proposed definition of *local* does neither. It is not difficult to present examples of the perverse incentives that can be set up with such a scheme. These incentives can easily lead to making non-optimizing decisions and to *discourage* widespread development of C-BED projects.

¹⁰Beginning on page 5, staff listed a number of themes of public comment in opposition to the project. Staff’s opinion is that, other than the first one listed—Goodhue Wind, LLC and the Goodhue Wind project do not qualify for C-BED status—the themes address either a problem with the statute itself, which the Commission cannot change, or issues that, while important, are not relevant to the determination regarding the PPAs. Many of those maintaining the project is not C-BED do so because the owners are not perceived as “local.”

Suppose, for instance, that a proposed C-BED project is located in the southwest corner of a rectangular county. Two companies might each be able to provide maintenance support for the project. One, located four miles away, is in an adjacent county. The second, forty miles away, is in the same county as the project. Use of the first would be more efficient, but (under the OES's proposed weighting scheme) the second might have to be chosen to qualify the project as C-BED. The benefits would be less than optimal.

Further, one need look at only any one of the hundreds of comments received from wind developers in these dockets to see that limiting "other local entities" in the way suggested by the OES will drastically reduce the number of projects that can qualify. Indeed, it is possible that *no* project could be made to fit the definition. This is hardly in keeping with the Legislature's goals of "optimizing benefits" and "facilitating widespread development."

Certainly also, the fact that the letters previously issued by the OES approved proposed projects as C-BED projects suggests that defining "local entities" as "those in Minnesota" is an interpretation that would reasonably occur to someone engaged in evaluating the projects in light of the statute.

In his comments, Paul Reese asked that the Commission also review Minn. Stat. §216B.1612, subd. 7 (c):

A qualifying owner, or any combination of qualifying owners, may develop a joint venture project with a nonqualifying renewable energy project developer. However, the terms of the C-BED tariff may only apply to the portion of the energy production of the total project that is directly proportional to the equity share of the project owned by the qualifying owners.

While this language does not go directly to whether the project qualifies as a C-BED project, it suggests that it may be appropriate to consider that only some of the energy generated by the project, specifically that fraction of the energy equal to the fraction of total equity held by qualifying owners, should be able to receive the C-BED price; the rest would be priced as non-C-BED energy.

Staff has been told the purpose of this provision is to permit a C-BED project to "piggyback" on a (presumably larger) non-C-BED project in order to avail itself of economies of scale in things like contracting and project management. For example, a C-BED project consisting of one or two turbines might join with a 75 or 100 MW non-C-BED project for materials acquisition and construction, yet the projects would be separable in terms of turbine ownership, and each project would have its own PPA.

This interpretation certainly makes sense, but staff has a concern that it requires a considerable amount of “reading into the statute” to reach that understanding. Why shouldn’t the Commission determine that that fraction of the Goodhue project’s energy equal to the ownership share of qualifying owners be treated as the C-BED project energy, and the rest as non-C-BED project energy? While there is no separate ownership, and no separate PPA, are those really required under the statute?

It may be a satisfactory response to these questions to say that subd. 2 (g) is all that is necessary to define the project as a C-BED project. If the Commission finds the Goodhue project to be a C-BED project under subd. 2 (g), then the whole project is, indeed, a C-BED project, and subd. 7 (c) may be ignored. Staff urges the Commission to give careful consideration to this issue.

Reasonableness of Price

The Commission cannot stop after ruling whether or not the Goodhue project is a C-BED project. Whether it is or isn’t C-BED, the Commission must also address the reasonableness of the PPAs. And that question comes down to price.

In its comments, the OES found that these PPAs had the same terms and conditions as previously-approved C-BED PPAs. It also found that the PPAs provided appropriate protection for ratepayers from financial and operational risks, and that the curtailment provisions are appropriate. Finally, the OES said that in these PPAs, Xcel is “pursuing the most cost-effective C-BED resources.” Nevertheless, the OES questioned whether the price specified in the PPAs is reasonable. Though the prices differ, the the OES questioned reasonableness regardless of whether or not the project is a C-BED project.

The OES compared the cost of power under the PPAs in this docket with the cost of power from Xcel’s Nobles project. In the Nobles project, Xcel will own the turbines. The OES found that the price to be paid under the PPAs as a C-BED project exceeds the cost of power from the Nobles project. The same is the case for the PPAs using the non-C-BED price, though to a lesser extent. See Table 1 on page 13 of the March 29, 2010 OES reply comments.¹¹

The OES referred the Commission to Minn. Stat. §216B.1612, subd. 5 (a):

A utility subject to section 216B.1691 that needs to construct new generation, or purchase the output from new generation, as part of its plan

¹¹The OES’s computation is the only one in the record. It is possible that others would dispute the resulting value or would employ a different computation to make the comparison. Staff cannot attest that all factors that went into the computation make it a fair comparison.

to satisfy its good faith objective and standard under that section must take reasonable steps to determine if one or more C-BED projects are available that *meet the utility's cost and reliability requirements*, applying standard reliability criteria, to fulfill some or all of the identified need *at minimal impact to customer rates*.

Nothing in this section shall be construed to obligate a utility to enter into a power purchase agreement under a C-BED tariff developed under this section. (Emphasis added by the OES.)

The OES said utilities are under no obligation to purchase any particular quantity of C-BED projects. If a C-BED project has more than a “minimal impact,” there is no need to enter into a power purchase agreement. The fundamental policy question for the Commission is how much more expensive a C-BED project can be and still be considered to have a “minimal impact.” So even if the Goodhue project is a C-BED project, the Commission needs to determine whether the price is reasonable by determining whether the rate impact is minimal.

The first two paragraphs of the Commission's June 19, 2009 *Order Approving Target Portfolio Allocation Within Xcel's Renewable Energy Plan*, Docket No. E-002/M-07-1558 read as follows:

1. The Commission hereby approves the proposal of Northern States Power Company d/b/a Xcel Energy to pursue a portfolio of renewable energy resources, and approves a preliminary target allocation deriving one-third of the portfolio's electricity from independent power producers, one-third from community-based economic development producers, and one third from utility-owned resources.
2. In selecting and acquiring resources, Xcel shall evaluate all ownership options on an equal basis. If Xcel does not employ a competitive bidding process, Xcel must provide evidence demonstrating that the projects it selects achieve the greatest effects for the least cost.

The OES said Xcel did not do what the Order required. The evaluation of the C-BED projects was carried out only with respect to other C-BED projects, and not with respect to Xcel-owned or independent power producer projects.

Staff's understanding is that the bidding process which led to negotiation of these PPAs was conducted in January and February of 2009. If so, it would have *preceded* the date of the Order by several months.

In any event, the Commission must determine whether it is reasonable for Xcel to purchase power at any premium over what it costs the Company to generate renewable power on its own.

Decision Alternatives

1. Decide whether a contested case is required.
 - a) Determine that a contested case is required to resolve the issues in these two dockets.
 - b) Determine that a contested case is not required to resolve the issues in these two dockets.
2. Decide whether to approve the proposed amendment.
 - a) Approve the proposed amendment.
 - b) Reject the proposed amendment.
3. Decide whether the Goodhue project is a C-BED project.
 - a) Determine that the Goodhue project is a C-BED project with a minimal impact on Xcel's rates and approve the Power Purchase Agreements.
 - b) Determine that the Goodhue project is a C-BED project with more than a minimal impact on Xcel's rates and reject the Power Purchase Agreements.
 - c) Determine that the Goodhue project is *not* a C-BED project and reject the Power Purchase Agreements.
 - d) Determine that the Goodhue project is *not* a C-BED project and solicit additional comments to develop the record in the Certificate of Need docket.
4. Require Xcel to provide, in 60 days, a filing showing how Xcel will fully comply with the Commission's Target Order and abide by the commitments Xcel made in that Order. At a minimum, this filing should discuss an all-source renewable bidding process, where C-BED, non-C-BED and utility-owned projects would compete with each other to set out the least-cost ways to meet the Minnesota RES. The petition should also explain how Xcel intends to balance the appropriate factors of Minnesota Statutes §§216B.1691, subd. 10 and 216B.1612, subd. 5:
 - promoting rural economic development;

- reliability;
 - minimizing cost; and
 - acquiring C-BED projects at a minimal cost impact.
5. Require Xcel to provide, in the Company's PPA petitions an estimate of the premium for C-BED petitions based on a comparison of the proposed C-BED price to Xcel's own high end estimate of the levelized cost of Xcel's Nobles project used in the OES's cost comparison as presented in Table 1 of the OES reply comments. This information should be updated when the results of a competitive bidding process is known.

Recommendation

Staff recommends Alternatives 1b; 2a; and 3a or 3b. If the Commission determines the project is *not* a C-BED project, staff recommends Alternative 3d. Staff makes no recommendation regarding Alternatives 4 and 5.