



414 Nicollet Mall
Minneapolis, MN 55401

May 8, 2017

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

—Via Electronic Filing—

RE: IN THE MATTER OF POSSIBLE AMENDMENTS TO RULES GOVERNING
CERTIFICATES OF NEED AND SITE AND ROUTE PERMITS FOR LARGE ELECTRIC
POWER PLANTS AND HIGH-VOLTAGE TRANSMISSION LINES, MINNESOTA
RULES, CHAPTERS 7849 AND 7850; AND TO RULES GOVERNING NOTICE PLAN
REQUIREMENTS FOR HIGH-VOLTAGE TRANSMISSION LINES, MINNESOTA
RULES, PART 7829.2550

DOCKET NO. E, ET, IP-999/R-12-1246

Dear Mr. Wolf:

Northern States Power Company, doing business as Xcel Energy, submits to the Minnesota Public Utilities Commission these comments on Staffs' February 2017 draft changes to Minnesota Rules Chapters 7850. We provide these limited comments to facilitate Staffs' final review before submission to the Minnesota Public Utilities Commission ("Commission") for initiation of formal public rulemaking, and look forward to participating in that process for both Chapters 7849 and 7850.

PRE-APPLICATION PROCESS

We appreciate the desire to formalize a pre-application process and believe most of the rule additions would appropriately codify steps Xcel Energy routinely takes prior to filing an application for any project. Comments on specific rules are provided below:

Proposed Rule 7850.1620 requires an applicant to hold pre-draft application filing public outreach meetings on routes under active consideration by the applicant in each county where a high voltage transmission line would be located. It is Xcel Energy's standard practice to hold pre-application public outreach meetings. We believe it would be more practical to provide flexibility in the rule that focuses on facilitating landowner participation rather than prescribing a specific county

requirement. We suggest that the rule require applicants to hold meetings in areas along the routes under active consideration in locations that are convenient for persons who live near the proposed project.

Proposed Rule 7850.1680, Subp. 2 would add a new comment period (21 days) and reply comment period (10 days) to the Power Plant Siting Process. Comments would be required on the Draft Permit Application. In practice, Xcel Energy believes there could be inherent problems, and duplication of work effort with these comment periods. First, presumably, the Commission would be asking for comments on the “completeness” of the draft application. At the end of 21 days, the Commission would need to determine which comments merited a reply to application completeness. Then the applicant would have an opportunity of only 10 days to reply to those comments. We believe this comment and reply process would likely require a great deal more time than the 31 days listed in the proposed rule. Moreover, the process would result in duplication of effort. Under the newly proposed pre-application activities (7850.1620), the public will have had at least one pre-application meeting, with associated comment opportunities, and applicants will be required to share those comments with the Commission, as part of the Draft Application. New notice provisions in the proposed rules will assure wide-ranging public participation prior to any draft application being submitted, with the public still being afforded two to three additional comment opportunities once state review begins. In practice, Commission and Department staff have always been able to review and determine an Application’s completeness, based on a well-defined set of Application Content Requirements in 7850.1640. We believe the Commission can get the same value of public input during the overall review process without establishing a 31-day minimum comment and reply period on a draft application.

Site and Route Permit Application Content requirements listed in 7850.1900, Subparts 1 & 2 (B – G,) are only shown as content requirements for the Site/Route Permit Application, and not the Draft Application. The Commission would reasonably like to be able to review this information at the Draft Application stages, and Xcel Energy would agree to providing it. This can be corrected in the proposed rules by adding items B-G to the Draft Application content requirements.

EMINENT DOMAIN

Proposed rules 7850.1640, Subp. 2, (Q) and Subp. 3, (U) would require an applicant to state whether it intends to waive its right to exercise eminent domain. Similarly, proposed rule 7849.0130, Subp. C (7) would require an applicant to state whether it will be “retaining the option to exercise eminent domain...” While Xcel Energy strives to avoid using eminent domain rights, it would not waive those rights in

developing projects, as it has an obligation to ratepayers to construct needed projects and to do so in a cost effective manner. If eminent domain were waived, Xcel Energy might not be able to obtain necessary land rights or have to pay above market rates to get them. Eminent domain rights have been granted to public service corporations by the Legislature to help balance the need for just compensation for land owners with the need to efficiently site infrastructure projects. Xcel Energy suggests that this language be stricken from the proposed rules.

In addition, the requirements in (V)(2) are unworkable. This rule requires applicants to provide "the percentage of contiguous land within each proposed route subject to a fee interest in condemnation under Minnesota Statutes, section 216E.12, subd. 4." Collection of such data would require title review of each and every parcel along proposed routes, parcels that can number in the hundreds. This information is not relevant to the routing factors and could require permittees to conduct thousands of title searches for properties among multiple routes. Even if contiguous parcels were identified, that information alone would not conclusively show what parcels may be eligible for Buy the Farm, as there are other requirements that must be met. Moreover, only a small percentage of parcels end up in condemnation. Xcel Energy does not believe this provision would inform the Commission's decision, and it should not be adopted.

PREEMPTION OF LOCAL ORDINANCES

Xcel Energy recommends that the Commission amend proposed rule 7850.4400, subp. 4 as follows:

Subp. 4. Prime farmland exclusion. Use of prime farmland is subject to the following restrictions.

A. ~~Except as set forth in B below,~~ No large electric power generating plant site may be permitted where the developed portion of the plant site, excluding water storage reservoirs and cooling ponds, includes more than 0.5 acres of prime farmland per megawatt of net generating capacity, or where makeup water storage reservoir or cooling pond facilities include more than 0.5 acres of prime farmland per megawatt of net generating capacity, unless there is no feasible and prudent alternative. Economic considerations alone do not justify the use of more prime farmland. "Prime farmland" means those soils that meet the specifications of Code of Federal Regulations 1980, title 7, section 657.5, paragraph (a). These provisions do not apply to areas located within home rule charter or statutory cities; areas located within two miles of

home rule charter or statutory cities of the first, second, and third class; or areas designated for orderly annexation under Minnesota Statutes, section 414.0325.

B. The restriction in A above does not apply to a solar-powered LEPPG is prohibited on prime farmland unless solar energy generating system if:

(1) the commission approves an farmland agricultural mitigation plan developed in consultation with the Minnesota department of agriculture; and

(2) at the time of the application, there is no local zoning ordinance prohibiting the construction of a solar-powered LEPPG on prime farmland.

These changes amend the proposed rule to use the statutory definition of solar facilities in Minn. Stat. § 216E.01, subd. 9a, and then provide that solar energy generating systems may be sited on prime farmland if they have a Commission-approved agricultural mitigation plan developed in consultation with the Minnesota Department of Agriculture. These changes delete references that would otherwise have prohibited siting of solar facilities on prime farmland, even if they could otherwise meet the requirements of Minn. R. 7850.4400, subp. 4 A. While current solar technology would not qualify for this exception, it could do so in the future.

The proposed revisions also delete the language that local ordinances could be enacted to prohibit siting of solar facilities on prime farmland. The Commission has been vested with the responsibility and authority to site large energy facilities in the state, and this authority has preemptive effect over “zoning, building, or land use rules, regulations, or ordinances promulgated by regional, county, local and special purpose government.” Minn. Stats. § 216E.10, subd. 1. The rule, as proposed, could be construed as diminishing the Commission’s preemptive authority and therefore should not be adopted.

CONTESTED CASE HEARINGS AND ENVIRONMENTAL REVIEW—FULL PROCESS

Under current practice and the proposed rules, there is a requirement for a public environmental review meeting for the public to comment on the draft environment impact statement (DEIS), Proposed Rule 7850.2550, Subp. 4, and contested case proceedings pursuant to Minnesota Statutes Chapter 14, Proposed Rule 7850.2570, Subp. 1. In proposing revised rules, the Commission may wish to consider combining

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these two public hearing processes to reduce landowner confusion about what types of comments they should make in which forum and to streamline the hearing process. The single hearing could take comments from the public on the DEIS and on the merits of the project itself.

FINAL ENVIRONMENTAL IMPACT STATEMENT

Proposed Rule 7850.2650, Subp. 3, establishes a 25-day period for “comments” on the Final Environmental Impact Statement (FEIS.) If there is a comment period for the FEIS, we recommend that the comment period be set at no longer than 20 days and expressly focus on the adequacy of the FEIS to aid in the Commission’s Final Decision defined in Minnesota Rule 7850.2700, Subps. 2 and 3.

OVERALL SCHEDULE

We recognize that Staff has been working to ensure that the proposed rules fit within the statutory deadlines for Commission decisions. We appreciate Staff’s efforts and believe it is important that the Commission’s rules provide for a predictable process for all stakeholders.

CONCLUSION

Thank you for the opportunity to submit these comments. We have electronically filed this document with the Minnesota Public Utilities Commission, and copies have been served on the parties on the attached service list. Please contact me at (612) 330-1955 or Timothy.G.Rogers@xcelenergy.com with any questions.

Sincerely,



TIMOTHY ROGERS
MANAGER, SITING AND LAND RIGHTS

