

August 2, 2017

PUBLIC DOCUMENT

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

RE: **PUBLIC Comments of the Minnesota Department of Commerce, Division of Energy Resources**
Docket No. E002/M-17-532

Dear Mr. Wolf:

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

Petition for approval of Amendment No. 1 to the Power Purchase Agreement (PPA) with the Hennepin Energy Recovery Center.

The Petition was filed on June 30, 2017 by:

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

The Department recommends that the Minnesota Public Utilities Commission (Commission) **take no action on the Petition and direct Xcel to pursue arbitration**. The Department is available to respond to any questions the Commission may have.

Sincerely,

/s/ STEVE RAKOW
Analyst Coordinator

SR/lt
Attachment

Before the Minnesota Public Utilities Commission

PUBLIC Comments of the Minnesota Department of Commerce Division of Energy Resources

Docket No. E002/M-17-532

I. INTRODUCTION

On July 29, 1986, the Minnesota Public Utilities Commission (Commission) issued its *Order Approving Electric Sale Agreement* (1986 Order) in Docket No. E002/CI-86-176. The 1986 Order approved the *Resource Recovery Electric Sale Agreement between Northern States Power Company and Hennepin Energy Resource Co., Limited Partnership* (HERC PPA) between Northern States Power Company (NSP, Xcel, or the Company) and Hennepin Energy Resource Co., Limited Partnership (HERC). The HERC PPA currently has an end date of December 31, 2017.¹ However, the HERC PPA includes a seven-year extension at HERC's option.

On June 30, 2017, Xcel filed the Company's *Petition for Approval of Amendment No. 1 to the Power Purchase Agreement with the Hennepin Energy Recovery Center* (Petition) pursuant to Minnesota Statutes §§ 216B.1645 and 216B.164. The Petition contains the *First Amendment to the Resource Recovery Electric Sale Agreement Between Northern States Power Company and County of Hennepin* (Amendment No. 1), which includes the terms for the seven-year extension option exercised by HERC.

The Company requests that the Commission:

- approve the proposed Amendment No. 1 to extend the HERC PPA; and
- approve continued cost recovery of the PPA through the fuel clause adjustment (FCA).

Below are the comments of the Minnesota Department of Commerce, Division of Energy Resources, Energy Regulation and Planning (Department) regarding the Petition.

¹ According to the information in Appendix J of Xcel's petition in the Company's most recent resource plan (Docket No. E002/RP-15-21) HERC's facility has a maximum capacity of 33.7 MW and is fueled with refuse derived fuel (RDF).

II. DEPARTMENT ANALYSIS

A. GOVERNING STATUTES AND RULES

The Company filed the Petition pursuant to Minnesota Statutes §§ 216B.1645 and 216B.164. Minnesota Statutes § 216B.1645 subd. 1 and 2 states in part:

Subdivision 1. Commission authority. Upon the petition of a public utility, the Public Utilities Commission shall approve or disapprove power purchase contracts, investments, or expenditures entered into or made by the utility to satisfy the wind and biomass mandates contained in sections 216B.169, 216B.2423, and 216B.2424, and to satisfy the renewable energy objectives and standards set forth in section 216B.1691...

The Commission's September 9, 2010 *Order Determining Ownership of Renewable Energy Credits for Power Purchase Agreements Made Pursuant to State Wind and Biomass Statutes and the Federal Public Utility Regulatory Act* (2010 Order) [Docket No. E002/M-08-440] determined that "avoided cost rates for capacity and energy sold under contracts entered into pursuant to [Public Utility Regulatory Policies Act] PURPA do not convey renewable energy credits to the purchaser of the energy." Thus, it cannot be said that the HERC PPA was "made by the utility to satisfy the wind and biomass mandates contained in sections 216B.169, 216B.2423, and 216B.2424, and to satisfy the renewable energy objectives and standards set forth in section 216B.1691." Therefore, based upon the 2010 Order the Department concludes that Minnesota Statutes § 216B.1645 does not apply to the Petition.

Minnesota Statutes § 216B.164 subd. 4 states in relevant part:

Subd. 4. Purchases; wheeling; costs. (a) Except as otherwise provided in paragraph (c), this subdivision shall apply to all qualifying facilities having 40-kilowatt capacity or more as well as qualifying facilities as defined in subdivision 3 and net metered facilities under subdivision 3a, if interconnected to a cooperative electric association or municipal utility, or 1,000-kilowatt capacity or more if interconnected to a public utility, which elect to be governed by its provisions.

(b) The utility to which the qualifying facility is interconnected shall purchase all energy and capacity made available by the qualifying facility. The qualifying facility shall be paid the utility's full avoided capacity and energy costs as negotiated by the parties, as set by the Commission, or as determined through competitive bidding approved by the Commission. The full avoided capacity and energy costs to be paid a qualifying facility that generates electric power by means of a

renewable energy source are the utility's least cost renewable energy facility or the bid of a competing supplier of a least cost renewable energy facility, whichever is lower, unless the Commission's resource plan order, under section 216B.2422, subdivision 2, provides that the use of a renewable resource to meet the identified capacity need is not in the public interest.

(c) For all qualifying facilities having 30-kilowatt capacity or more, the utility shall, at the qualifying facility's or the utility's request, provide wheeling or exchange agreements wherever practicable to sell the qualifying facility's output to any other Minnesota utility having generation expansion anticipated or planned for the ensuing ten years. The Commission shall establish the methods and procedures to insure that except for reasonable wheeling charges and line losses, the qualifying facility receives the full avoided energy and capacity costs of the utility ultimately receiving the output.

(d) The Commission shall set rates for electricity generated by renewable energy.

Xcel's response to Department Information Request No. 1 Xcel cited the 2010 Order as stating "The PURPA PPAs at issue in the current docket [Docket No. E002/M-08-440] fall under both the QF category of cogenerators (*e.g.*, the HERC facility) and renewable power producers (*e.g.*, small hydroelectric dams)." Therefore, the Department agrees with Xcel that Minnesota Statutes § 216B.164 applies to the Petition.

The Petition qualifies as a miscellaneous tariff filing. Minnesota Rules part 7829.1300 contains the completeness requirements for miscellaneous tariff filings. The Department reviewed the Petition for compliance with the completeness requirements and concludes that the Petition is complete.

B. REVIEW OF THE AGREEMENT

1. Pricing Terms

a. 2017 Price

The HERC PPA, at section 7.13 states "if Seller [HERC] decides to continue to operate the plant after the first 28 years, NSP will purchase the electrical output offered to NSP by Seller at its fair market value to NSP at the time it is offered , for up to an additional 7 years of plant operation." The Petition further clarifies that "fair market value is not a defined term and the agreement contemplates arbitration if the parties cannot agree on an extension price."

Amendment No. 1 specifies a new energy-only or “all-in” price for 2017 of **[TRADE SECRET DATA HAS BEEN EXCISED]** and specifies that Xcel will make a retroactive adjustment for all of 2017. The demand charges for 2017 in Xcel’s recently approved rate case must be added to the “all-in” price to arrive at the actual cost of HERC’s PPA for Xcel’s ratepayers. The Petition states that the amount of demand charges in base rates is about \$8 million. The Department calculated the average annual energy production from the HERC PPA for years 2007 to 2016 using Federal Energy Regulatory Commission (FERC) Form 1 data reported by Xcel as about 192,000 MWh. Thus, the demand charges already built into Xcel’s rates amount to about \$41.67 per MWh. As a result, the total proposed ratepayer cost for the HERC PPA for 2017 actually will be about **[TRADE SECRET DATA HAS BEEN EXCISED]**

For comparison, the Department calculated the equivalent, “all-in” cost per MWh of the HERC PPA for years 2007 to 2016 using FERC Form 1 data reported by Xcel. The resulting costs per MWh were converted into real (2016) dollars using a 2 percent inflation rate. The result of these calculations was a cost range of \$58.54 per MWh to \$79.30 per MWh with an average cost of \$68.25 per MWh.

Based upon this information the Department concludes that Xcel’s proposed ratepayer cost for 2017 is unreasonable because it far exceeds the recent pricing history for the HERC PPA. This result occurs because Xcel negotiated a structure that would allow the Company to charge ratepayers twice for the same component (the capacity). Therefore, the Department recommends that the Commission reject the Xcel’s proposed repricing for 2017.

b. Extension Period Price

Amendment No. 1 provides a price of **[TRADE SECRET DATA HAS BEEN EXCISED]** for 2018 and **[TRADE SECRET DATA HAS BEEN EXCISED]** through the end of the term in 2024. Under the HERC PPA the criteria for judging the price for the extension period (2018 to 2024) is whether the price reflects “fair market value.” Clearly, a bidding process would best establish the fair market value of the energy from HERC. Xcel’s most recent bidding process was for wind determined a price per MWh far below that proposed for the extension period. However, wind, as a resource, is not directly comparable to HERC.

Thus, the Department reviewed historical MISO market prices at the Minnesota hub for 2007 to 2016, converted to real 2016 dollars using a 2 percent inflation rate.² The result was a cost range of \$20.54 per MWh to \$62.05 per MWh with an average cost of \$34.50 per MWh. However, most recently (the last 5 years) prices have been much lower, averaging \$27.43 per

² There are several potential problems in the data, such as use of day ahead prices for 2007 to 2011 and real time prices thereafter; use of prices with and without MISO South, which joined in December 2013. Therefore, the Department considers the data merely to be a point of information.

MWh. Xcel's forecast of MISO market prices, taken from the Company's Petition in Docket No. E002/M-17-531 is comparable to the recent history and is illustrated in Figure 1 below. Figure 1 shows that the negotiated price is far above the market value.

Figure 1: Negotiated Price Versus Market Value

[TRADE SECRET DATA HAS BEEN EXCISED]

The addition of the cost of capacity value from MISO's annual capacity auction would not change the short-term energy price significantly due to the current low capacity costs in MISO's Zone 1.

Finally, the Department notes that the Petition admits both that the 1) negotiated prices are too high and 2) Xcel is unable to negotiate contract prices that reflect market prices: "while the proposed extension pricing is somewhat higher than current market estimates for energy and capacity, it is reflective of recent agreements the Company has entered into." This statement is further evidence supporting a conclusion that Xcel's proposed prices for the extension period are unreasonable.

In essence, ratepayers would be harmed twice; first by the higher-than-market price Xcel negotiated and second by a pricing structure that would allow Xcel to charge ratepayers twice for demand charges in 2017. As a result HERC and Xcel would be better off under this proposal, but Xcel's ratepayers would end up with significant and unreasonable cost increases. Therefore, the Department recommends that the Commission reject the Xcel's proposed pricing for extension period.

The result of rejecting or taking no action on the proposed prices for the extension period would be that Xcel and HERC could pursue arbitration to determine the appropriate price. Therefore, the Department recommends that the Commission take no action on the PPA. Instead, Xcel could pursue arbitration and submit the results of the arbitration for the Commission's review. Because the PPA is a contract between Xcel and HERC, the Department's understanding is that the results of such arbitration would not be binding on either the Commission or ratepayers.

Given Xcel's actions to date regarding the HERC PPA the Department recommends that the Commission order Xcel to file all of the Company's filings in the arbitration proceeding as a compliance filing in this docket so that the Department can determine the reasonableness of Xcel's actions on an on-going basis. This information would better enable the Department to determine the appropriate level of cost recovery in the future proceedings regarding the HERC PPA.

c. Savings Calculations

The Petition claims that “If the Commission approves our proposal to extend the HERC PPA, we expect NSPM customers will see a Net Present Value (NPV) savings of approximately \$27 million (\$33 million nominally) over the life of the PPA relative to the existing pricing methodology.” This calculation is incorrect and does not provide a proper determination of actual savings ratepayers might expect from the Petition.

First, as demonstrated above, the pricing structure for 2017 will actually represent a significant cost increase for Xcel’s ratepayers due to the Company’s double recovery of demand costs. Xcel’s calculations are in error as they do not consider this fact.

Second, Xcel compares the pricing negotiated for the extension period to the pricing in the expiring contract. This comparison is irrelevant. The correct comparison is of the negotiated price to the market value; there is no reason to conclude that a pricing structure negotiated in the 1980s accurately represents today’s market value. In fact, as demonstrated above, the pricing structure for the extension period will also represent a significant cost increase for Xcel’s ratepayers. Therefore, the Company’s claimed savings are inaccurate. In summary, the Department concludes that Xcel’s calculations are in error and that ratepayers will not realize savings as a result of the Petition.

2. Other Terms

The Department typically reviews PPAs to ensure that ratepayers are protected from financial and operational risks of the underlying project. In this case Amendment No. 1 does not change the operational risks since the original PPA allowed HERC to exercise the seven-year extension. Also, Amendment No. 1 can be assumed to have little impact on financial risk since the original PPA allowed HERC to exercise the seven-year extension. Finally, under the HERC PPA the proposed price in Amendment No. 1 must reflect fair market value. In summary, the financial and operational risks lie in the original PPA.

Amendment No. 1 proposes several changes to other, non-price terms in the HERC PPA. Most of these changes are minor in nature. However, the Department notes that Amendment No. 1’s proposed changes to the generator capacity testing process are reasonable as the proposed changes would move towards use of the MISO process established in MISO’s tariffs and business practices manuals. Similarly, Amendment No. 1’s proposed changes to the outage scheduling process are reasonable as the changes again move towards use of the MISO process.

Amendment No. 1 proposes changes the clause specifying the duration of the HERC PPA. Amendment No. 1's change to the term of the agreement clause is reasonable because it clarifies that HERC has determined to exercise the extension option in the HERC PPA and that further extensions would be voluntary on the part of both parties.

Finally, the condition precedent clause is of interest. The proposed condition precedent clause for the First Amendment states:

This First Amendment shall not take effect until the Minnesota Public Utilities Commission ("MPUC") approval is received for this First Amendment. For purposes of this First Amendment, "PUC Approval" means a written order of the Minnesota ("MN") PUC an/or an advance determination of prudence from the North Dakota Public Service Commission ("ND PSC"), which alone or in combination make an affirmative determination that all costs incurred under this First Amendment are recoverable from NSP's retail customers pursuant to applicable law, subject only to the requirement that the MN PUC and ND PSC (as applicable) retain ongoing prudence review of NSP's performance and administration of this Agreement.

This proposal indicates that Xcel and HERC contemplate that Minnesota customers must pay for any of North Dakota's share of the cost of Amendment No. 1 that the ND PSC does not allow to be recovered in rates in that state. The Department concludes that, even if the Commission were to approve a PPA between Xcel and HERC despite the Department's recommendations, this provision must be denied.

C. REVIEW OF COST RECOVERY

1. Renewable Energy Standard

Minnesota Statutes §§ 216B.1645 states that the Commission shall approve or disapprove PPAs entered into by the utility to satisfy the renewable energy objectives and standards set forth in section 216B.1691. However, the Order clarified that the renewable energy credits associated with HERC's facility do not belong to Xcel. Therefore, the Department recommends that the Commission determine that the HERC PPA is not needed by Xcel for compliance with Minnesota's renewable energy standard. As a result, costs of the HERC PPA are not eligible for recovery through Xcel's rider for renewable energy.

2. *FCA*

Xcel seeks Commission's approval to recover the costs of the HERC PPA through the FCA pursuant to Minnesota Statutes § 216B.1645. Above the Department concluded that Minnesota Statutes § 216B.1645 does not apply to the Petition. However, Xcel states that the costs of the HERC facility are currently included in the FCA. The Department presumes such recovery has occurred is because Minnesota Rules 7825.2600 states that "the adjustment per Kwh is the sum of the current period cost of energy purchased and cost of fuel consumed per Kwh less the base electric cost per Kwh." The cost of energy purchased is defined by Minnesota Rules 7825.2400 as "the cost of purchased power and net interchange defined by the Minnesota uniform system of accounts, class A and B electric utilities, account 555 and purchased under federally regulated wholesale rates for energy delivered through interstate facilities." Therefore, if the Commission approves Xcel's proposed Amendment No. 1, the Department recommends that the Commission approve continued recovery solely of the HERC PPA's energy-related costs through the FCA, with demand charges recovered through base rates. Thus, some of the "all-in" per MWh cost would not flow through the FCA since it represents recovery of demand costs.

If the Commission agrees with the Department's analysis and determines that Xcel should pursue arbitration to determine the fair market value during the HERC PPA's extension period a determination on cost recovery need not be made at this time.

D. RESOURCE PLAN IMPACTS

The Company's most recent resource plan (Docket No. E002/RP-15-21) assumed that the HERC unit retired at the end of December, 2017. Potentially, extending the life of the HERC PPA to 2024 might impact the Company's expansion plan. Therefore, the Department reviewed the modeling files from the resource plan.

Technically, the unit in Strategist representing the HERC PPA is flagged as must run (until the retirement date). In combination with other inputs, this flag indicates to Strategist that the HERC PPA unit must be dispatched before any non-must run unit is dispatched. Thus, to Strategist extending the life of the HERC PPA unit to December 2024 is equivalent to reducing the forecast for the years 2018 to 2024. That is, adding must run supply and reducing the demand and energy forecast are equivalent actions to the operation of the dispatchable units and for consideration of the addition of optional, expansion units.

A change in the forecast equivalent to approval of Amendment No. 1 is far smaller than the forecast contingencies used by the Department and Xcel. In addition, the increased capacity due to the extension period could be offset by the early termination of the PPAs in other

pending dockets (see Docket Nos. E002/M-17-530, E002/M-17-531, and E002/M-17-551) if approved by the Commission. Therefore, the Department concludes that the resource plan analysis already analyzed contingencies with a similar, but far larger impact. Since the Department's recommended expansion plan already considered a far lower forecast, extension of the HERC PPA should not be expected to materially impact the Department's recommended expansion plan from Xcel's last resource plan.

III. DEPARTMENT RECOMMENDATION

The Department recommends the Commission:

1. take no action on the Petition;
2. order Xcel to file all of the Company's filings in any arbitration proceeding as a compliance filing in this docket; and
3. order Xcel to file the result of any arbitration for Commission review.

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CERTIFICATE OF SERVICE

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

**Minnesota Department of Commerce
Public Comments**

Docket No. E002/M-17-532

Dated this 2nd day of August 2017

/s/Sharon Ferguson

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