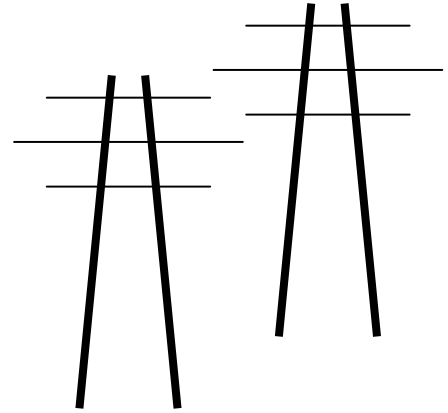


Legalelectric, Inc.

Carol Overland Attorney at Law, MN #254617
Energy Consultant—Transmission, Power Plants, Nuclear Waste
overland@legalelectric.org

1110 West Avenue
Red Wing, Minnesota 55066
612.227.8638



September 1 2017

Dan Wolf
Executive Secretary
Public Utilities Commission
121 – 7th Place East, Suite 350
St. Paul, MN 55101

RE: In the Matter of Xcel Energy’s Petition for Approval to Terminate the Power Purchase Agreement with Benson Power, LLC, Acquire the Benson Power Biomass Plant, and Close the Facility
MPCU Docket No. E-002/M-17-530

Dear Mr. Wolf:

Attached please find Initial Comments regarding the above-captioned docket, on behalf of myself, as an individual, and not on behalf of any client.

The questions open for comment are:

- Does the information and analysis provided by Xcel Energy in its petition and by the Department in its comments result in an adequate record upon which the Commission can make a decision?
- Please provide any other information, analysis, and recommendations the Commission should consider.

I. BACKGROUND

A number of filings are in the docket from biomass supplier/trucking companies, and lobbying interests such as the Minnesota Turkey Growers, Timber Producers, and Contract Loggers and Truckers. There have been no public interest, advocacy or environmental groups filing comments, and though there are comments from Commerce DER, DER does not represent the public interest. Further, the Office of the Attorney General, RUD, has not filed comments. The

lack of public interest comments is concerning, given the public dollars that will be spent if Xcel Energy's plan is approved.

Roughly 20 years ago, I sat through at least a week of testimony before the Senate and House energy committees regarding this project. It was a bad idea then, and it remains a bad idea, and I'm grateful that Xcel Energy is asking that this PPA be terminated.¹

On the other hand, the manner in which this termination has been approached is problematic – Xcel Energy comes to the Commission with an agreement without input from regulatory entities or the public, and it's likely a “take it or leave it” agreement. It is not just “an agreement,” but it is three, one with Benson Power, LLC, and two with the City of Benson, a letter agreement and the RDF Grant Contract.

- **DOES THE INFORMATION AND ANALYSIS PROVIDED BY XCEL ENERGY IN ITS PETITION AND BY THE DEPARTMENT IN ITS COMMENTS RESULT IN AN ADEQUATE RECORD UPON WHICH THE COMMISSION CAN MAKE A DECISION? PLEASE PROVIDE ANY OTHER INFORMATION, ANALYSIS, AND RECOMMENDATIONS THE COMMISSION SHOULD CONSIDER.**

Xcel Energy's proposal must be reviewed from a public interest perspective. This agreement before the Commission is one of several in which Xcel Energy is extracting itself from PPAs, including the Laurentian Energy project, Pine Bend, and others. These PPAs are not economic, and are not in the public interest, and Xcel Energy would do us a favor with termination, and there is, as Xcel notes, “excess of capacity in MISO's Zone 1” so capacity is not an issue (and this excess is also a factor contributing to low prices, which makes the PPA's cost even worse in comparison). See Xcel Petition, p. 9, para. 2.

This notion of “public interest” is important in the Commission's approval of each of the three agreements presented by Xcel Energy, and in particular, because the Commission's only regulatory authority over expenditures from the Renewable Development Fund are that expenditures may be disapproved if not in the public interest:

(m) The advisory group shall submit funding recommendations to the public utility, which has full and sole authority to determine which expenditures shall be submitted by the advisory group to the legislature. The commission may approve proposed expenditures, may disapprove proposed expenditures that it finds not to be in compliance with this subdivision or otherwise not in the public interest, and may, if agreed to by the public utility, modify proposed expenditures. The commission shall, by order, submit its funding recommendations to the legislature as provided under paragraph (n).

Minn. Stat. 116C.779, Subd. 1(m) (2017).

The project has since its construction been a losing proposition, the PPA was “renegotiated” early on, and as Xcel notes, the plant “entered receivership” in 2014. That point of receivership would

¹ Further, the Benson plant has been fined by the MPCA for violation of its air permit, which was modified to allowed increased harmful emissions.

have/should have provided a point of termination of the PPA. Instead, Xcel Energy proposes to buy the plant with ratepayer funds? This is not in the public interest.

Who is behind “Benson Power, LLC?” What part did the formation of Benson Power, LLC play in setting the stage for this “agreement?” Who benefits from the formation of Benson Power, LLC, its purchase of Fibrominn, LLC, and who benefits from this agreement? It appears that Xcel Energy is transferring the costs of this defaulted agreement to the ratepayers rather than allow Fibrominn, LLC to close the plant and default on its PPA. This is not in the public interest.

Xcel then went to the legislature, on the ratepayer dime, to get special legislation to provide \$20 million in funding from the Renewable Development Fund to the City of Benson for “economic development.” This is contrary to the purpose of the Renewable Development Fund, and is not in the public interest.

This Benson incinerator has been the recipient of public subsidies for decades, since the 1994 legislation that required the “biomass mandate,” and to see those subsidies extended into the future is not in the public interest.

Fibro Minn received exemptions from personal property tax in 2001, which was extended in 2003 and 2005. What are the property taxes that Xcel has included in its plan? Are these taxes the utility personal property taxes from which FibroMinn and the Benson plant were exempted? Given that the plant was in receivership, and would likely have closed, what is the value of the closed plant and why should property taxes be paid by ratepayers for a plant that would have closed had not Xcel Energy intervened with this agreement to terminate rather than default? This is not in the public interest.

It appears that the contract could have been terminated upon the default of Fibrominn, LLC., that this agreement is an unreasonable expenditure of ratepayer funds, and that it is not in the public interest to approve Xcel Energy’s plan.

At this time, I request that the agreements proposed by Xcel Energy be carefully reviewed, that consideration be given to who benefits, that these are part of connected Petitions where the Company wants to terminate other biomass and garbage burning PPAs, and the impact of these connected requests.

Thank you for the opportunity to file these Comments. Please let me know if you have any questions or require anything further.

Very truly yours,

A handwritten signature in cursive script that reads "Carol A. Overland".

Carol A. Overland
Attorney at Law