

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Nancy Lange	Chair
Dan Lipschultz	Commissioner
Matthew Schuerger	Commissioner
Katie J. Sieben	Commissioner
John A. Tuma	Commissioner

In the Matter of Xcel Energy’s Petition for Approval to Terminate the Power Purchase Agreement (PPA) with Benson Power, LLC, Acquire the Benson/Fibrominn Plant, and Close the Facility

ISSUE DATE: January 23, 2018

DOCKET NO. E-002/M-17-530

In the Matter of Xcel Energy’s Petition for Approval to Terminate the PPA with Laurentian Energy Authority I, LLC

DOCKET NO. E-002/M-17-551

ORDER APPROVING PETITIONS, APPROVING COST RECOVERY PROPOSALS, AND GRANTING VARIANCES

PROCEDURAL HISTORY

On June 30, 2017, Northern States Power Company d/b/a Xcel Energy (Xcel or the Company) filed a petition for approval to terminate a Power Purchase Agreement (PPA) with Benson Power, LLC (Benson Power), acquire the Benson Power biomass plant, and subsequently close the facility. The Company requested to recover the associated costs through the fuel clause adjustment (FCA).

On July 14, 2017, Xcel also filed a petition for approval to terminate a PPA with Laurentian Energy Authority I, LLC (LEA) and to recover the associated costs through the FCA. The petition also included a request that the Commission approve a Renewable Development Fund (RDF) grant contract between Xcel and Laurentian.

I. The Benson Power PPA

On August 2, 2017, the Department of Commerce, Division of Energy Resources (the Department), filed comments recommending that the Commission approve the petition to terminate the Benson Power PPA but disallow recovery of ineligible legal expenses.

Between August 30 and September 6, 2017, the Commission received comments on Xcel’s petition and on the Department’s comments from the following:

- Associated Contract Loggers and Truckers of Minnesota;
- Minnesota Timber Producers Association;
- Minnesota Turkey Growers Association;

- Pete Rothfork, a turkey farmer in Stearns County;
- Alan Muller, Energy and Environmental Consulting;
- Carol Overland, Legalectric, Inc.;
- North American Fertilizer, LLC and Beaver Creek Transport, Inc.;
- Xcel Energy;
- Huls. Bros. Trucking, Inc., Enberg Logging, LLC, and Pflipsen Trucking LLC;
- Carlson Timber and Land Clearing, Fletcher Trucking, Dukek Logging, Sawyer Timber Company, Harbo Mulch Inc., Dick Walsh Forest Products, and Precision Landscape and Tree Inc. (collectively the Benson Power Biomass Suppliers), Huls Bros. Trucking, Inc., Pflipsen Trucking, LLC, and D&D Ventures Inc.(the Benson Power Haulers); and
- the Department of Natural Resources.

By August 31, 2017, the Commission had received petitions to intervene from the following:

- Benson Power Biomass Suppliers;
- Huls Bros. Trucking, Inc.;
- Pflipsen Trucking, LLC;
- Enberg Logging, LLC;
- Beaver Creek Transport and North American Fertilizer;
- Associated Contract Loggers and Truckers of Minnesota;
- Minnesota Timber Producers Association; and
- Minnesota Turkey Growers Association;

By September 15, 2017, the Commission received reply comments from the following:

- Alan Muller;
- the City of Benson;
- Xcel Energy; and
- the Department.

On October 9, 2017, the Benson Power Biomass Suppliers and Haulers filed supplemental comments requesting clarification of the issues raised in comments.

On November 1, 2017, State Representative Dave Baker contacted the Commission requesting that the Commission delay action on the petition until after a separate state agency, the Department of Employment and Economic Development (DEED), studying the economic impact of the plant closure releases its study.

On November 27, 2017, North American Fertilizer and Beaver Creek Transport filed supplemental comments requesting environmental review of Xcel's petition.

On November 28, 2017, Michael Frey, owner of a sawmill delivering wood residual to Benson Power, requested that the Commission delay action on the petition by at least 120 days to allow time for the sawmill to find alternative equipment.

On November 29, 2017, DEED notified the Commission that it intends to release its economic impact study on the closure of the biomass facilities by February 15, 2018.

On November 29, 2017, State Representative Tim Miller filed a letter requesting that the Commission delay action on Xcel's petition until after the DEED study is released.

II. The Laurentian Energy Authority PPA

On August 14, 2017, the Department filed comments recommending that the Commission approve the petition to terminate the Laurentian Energy Authority I, LLC (LEA) PPA and approve the RDF grant contract.

On September 6 and September 8, 2017, the Commission received comments on Xcel's petition and the Department's comments from the Department of Natural Resources and LEA, respectively.

Between September 13 and September 18, 2017, the Commission received reply comments from the following:

- the United States Forest Service, Superior National Forest;
- the Minnesota Timber Producers Association;
- Associated Contract Loggers and Truckers of Minnesota;
- Xcel Energy;
- the Department; and
- Alan Muller.

By September 14, 2017, the Commission had received petitions to intervene from the Associated Contract Loggers and Truckers of Minnesota and the Minnesota Timber Producers Association.

On October 24, 2017, Xcel filed a clarification to its September 18 comments.

On November 30, 2017, the petitions came before the Commission.

FINDINGS AND CONCLUSIONS

I. Legal Background

Xcel filed its petitions under Minn. Stat. §§ 216B.2424, subd. 9, and 216B.1645, as well as under Minn. R. 7829.3200 and 7829.1300.

The facilities are governed by Minn. Stat. § 216B.2424, which sets forth the state's biomass power mandate. Subdivision 9 (a) and (c) of the statute govern early termination of a power purchase agreement and biomass facility closure, and read as follows:

Subd. 9 Adjustment of biomass fuel requirement.

(a) Notwithstanding any provision in this section, the public utility subject to this section may, with respect to a facility approved under this section, file a petition with the commission for approval of:

- (1) a new or amended power purchase agreement;

- (2) the early termination of a power purchase agreement; or
- (3) the purchase and closure of the facility.

...

(c) The commission may approve the early termination of a power purchase agreement or the purchase and closure of a facility under this subdivision if it determines that:

- (1) all parties to the power purchase agreement, or their successors or assigns, as applicable, agree to the early termination of the power purchase agreement or the purchase and closure of the facility; and

- (2) the early termination of the power purchase agreement or the purchase and closure of the facility is in the best interest of the customers of the public utility subject to this section, taking into consideration any savings realized by customers as a result of the early termination of the power purchase agreement or the purchase and closure of the facility and any costs imposed on the customers under paragraph (e).

Subdivision 9 (e) of the statute addresses a utility's recovery of costs associated with the early termination of a power purchase agreement as follows:

A utility may petition the commission to approve a rate schedule that provides for the automatic adjustment of charges to recover investments, expenses and costs, and earnings on the investments associated with a new or amended power purchase agreement, the early termination of a power purchase agreement, or the purchase and closure of a facility. The commission may approve the rate schedule upon a showing that the recovery of investments, expenses and costs, and earnings on the investments is less than the costs that would have been recovered from customers had the utility continued to purchase energy under the power purchase agreement in effect before any option available under this section is approved by the commission. If approved by the commission, cost recovery under this paragraph may include all cost recovery allowed for renewable facilities under section 216B.1645, subdivisions 2 and 2a.

In addition, Xcel's proposal to *purchase* the Benson facility is governed by Minn. Stat. § 216B.50, which applies to the sale or transfer of utility assets exceeding \$100,000, and authorizes such transfers if the Commission determines that the transaction is consistent with the public interest. A corresponding rule, Minn. R. 7825.1800, sets forth filing requirements applicable to such transactions.

II. Benson Power PPA

A. Xcel's Proposal

1. PPA Termination Agreement

In its filing proposing early termination of the Benson Power PPA, Xcel stated that the existing PPA is significantly above current market prices and that terminating the PPA, after accounting for all related costs, including closure and replacement power costs, is expected to achieve a net-present-value savings of \$345 million over the remaining life of the PPA, which would otherwise terminate on September 10, 2028.

Xcel explained that the Company originally entered into the PPA to satisfy a legislative mandate requiring the Company to construct and operate, or contract to construct, 125 megawatts (MW) of installed capacity (subsequently reduced to 110 MW) generated by farm-grown closed-loop biomass.¹ Xcel entered into PPAs with Benson Power (a 55-MW facility), LEA (a 35-MW facility) and St. Paul Cogen (a 25-MW facility).

After learning that Benson Power LLC, the plant's current owner, intended to sell the facility, Xcel stated that it pursued the option to terminate the Benson Power PPA and purchase and close the facility. In evaluating the costs of early termination and the costs of continuing the PPA, the Company considered replacement market energy costs during the remaining PPA term, as well as the cost of the buyout and subsequent shutdown.

To determine the cost of continuing the PPA, the Company calculated the assumed production from the plant (using actual historical production) multiplied by the expected cost of the PPA on a \$/megawatt-hour (MWh) basis. The Company also factored into its calculation the cost of other items, including fuel transportation, ash revenue shortfall, and property taxes. Based on the results of the Company's modeling using specific cost assumptions, the present-value-revenue-requirement over the remaining term of the PPA totaled \$561 million.

The net present value of the costs to buy and shutdown the facility and purchase replacement energy is estimated to be \$216 million, resulting in a net-present-value-savings of \$345 million to ratepayers, when compared to continuing with the PPA. In calculating the cost of terminating the PPA, the Company evaluated numerous cost factors, including the termination and asset purchase price, demolition and related costs, operations and transportation costs, and applicable taxes.

Based on its analysis, Xcel stated that the proposal satisfies the biomass statute, which authorizes the Commission to approve the early termination of a PPA on two conditions: if all parties to the power transaction – or their successors – agree, and if early termination is in the best interest of the utility's customers.² The parties, Xcel and Benson Power (Fibrominn LLC was an original party whose interest was acquired through receivership by Benson Power), have agreed to the

¹ Minn. Stat. § 216B.2424, subd. 5.

² *Id.* at subd. 9 (c).

terms and conditions of early termination. And, Xcel asserted that the transaction is in the best interest of its ratepayers, considering the anticipated savings.

Additionally, Xcel stated that its proposal is consistent with the public interest, a finding the Commission must make under Minn. Stat. § 216B.50 prior to authorizing the sale or transfer of a utility asset valued in excess of \$100,000.

The Company also emphasized that both Benson Power and the City of Benson support the proposal. The agreement to terminate includes commitments by Xcel that address safety and costs issues (such as payment to the City for the cost of a new water line). Additionally, recent legislative changes to the biomass statute state that if the Commission approves the termination proposal, the City of Benson will receive payment of \$20 million from the RDF to support economic development.³

Xcel proposed to close the facility on September 1, 2018.

2. Cost Recovery Proposal

Xcel proposed recovering costs by establishing a regulatory asset that includes the costs necessary to terminate the PPA, acquire the plant, and shut it down. And, Xcel requested recovery of operations and maintenance (O&M) costs necessary to run the plant through the shutdown period.

The Company proposed to amortize the asset, earning a cost of capital on the \$106.8 million asset over the remaining 11 years of the PPA using the capital structure and return on equity from the settlement in the Company's most recently approved rate case.⁴ Xcel stated that this approach equitably balances the interests of both ratepayers and the utility by limiting the immediate impact to ratepayers and fairly incentivizing utilities to act in the best interest of their customers.

In collecting projected O&M costs, the Company proposed to recover approximately \$14.5 million through the FCA as it is incurred. Xcel stated that collecting costs through the FCA is consistent with the biomass statute, which anticipates such recovery by authorizing the Commission to approve "a rate schedule that provides for the automatic adjustment of charges to recover investments, expenses and costs, and earnings on the investments associated...with the early termination" of a PPA.⁵

Xcel stated that its cost recovery request is also consistent with the statute's requirement to demonstrate "that the recovery of investments, expenses and costs, and earnings on the investments is less than the costs that would have been recovered from customers had the utility

³ Minn. Stat. § 116C.779, subd. 1 (f).

⁴ *In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota*, Docket No. E-002/GR-15-826, Findings of Fact, Conclusions, and Order (June 12, 2017).

⁵ Minn. Stat. § 216B.2424, subd. 9 (e).

continued to purchase energy under the power purchase agreement in effect before any option available under this section is approved by the Commission.”⁶

B. Comments on the Proposal

1. The Department

The Department supported the Company’s proposal and recommended that the Commission approve it, with the exception of the Company’s request to recover legal expenses.

a. PPA Termination Agreement

In assessing Xcel’s filing, the Department analyzed the Company’s cost-benefit analysis, potential resource plan impacts, and applicable regulations.

The Department scrutinized the Company’s assumptions and calculations for continuing the PPA and stated that they are reasonable. In particular, the Department noted that the higher cost of continuing the PPA directly correlates to projected fuel transportation costs per MWh, which exceed the total production cost per MWh of other baseload power plants on Xcel’s system.

The Department also evaluated the pricing terms and risk to ratepayers of terminating the PPA and stated that ratepayers are likely to benefit from Xcel’s proposal and that the financial risk is low, particularly in light of the fact that Xcel does not intend to rely on the facility for energy or capacity once the transaction closes. Further, the risk of a party defaulting on the agreement is low. The Department therefore concurred with the Company that the cost of early termination is more economical for ratepayers than continuing with the PPA.

The Department also examined the impact of the proposal on Xcel’s most recent integrated resource plan, which assumed that the Benson Power facility would terminate as scheduled in 2028.⁷ The Department stated that early closure of the facility is not likely to materially affect the plan. In the resource plan docket, the Department analyzed contingencies with larger impacts than the closure of Benson Power and stated that early closure is likely to accelerate the planned addition of a combustion turbine (from 2028 to 2026) but is unlikely to otherwise alter Xcel’s resource planning.

The Department considered the effect of termination on Xcel’s compliance with renewable energy standards requirements under Minn. Stat. § 216B.1691, which sets forth requirements for the procurement of renewable energy by electric utilities. The Department stated that although early termination of the Benson Power PPA would result in approximately 4.25 million fewer renewable energy credits (RECs) for Xcel than anticipated, that amount represents a small fraction of the RECs the Company will obtain from its recently approved wind portfolio over the life of those wind facilities.⁸

⁶ *Id.*

⁷ *In the Matter of Xcel Energy’s 2016 – 2030 Integrated Resource Plan*, Docket No. E-002/RP-15-21.

⁸ *In the Matter of the Petition of Xcel Energy for Approval of the Acquisition of Wind Generation from the Company’s 2016 – 2030 Integrated Resource Plan*, Docket No. E-002/M-16-777.

The Department also stated that early termination of the PPA is consistent with the biomass statute, Minn. Stat. § 216B.2424, subd. 9 (c), which authorizes early termination if parties to the original PPA (or their successors) agree to the terms and conditions governing termination, and if terminating the PPA is in the best interest of the utility's customers, considering, in part, the method of cost recovery. The Department stated Xcel has demonstrated that the original parties to the PPA are in agreement, and that the anticipated savings to ratepayers demonstrates that the transaction is in the best interest of Xcel's customers.

The Department also concurred with Xcel that in light of the ratepayer benefits, the proposal to purchase Benson Power is consistent with the public interest under Minn. Stat. § 216B.50.

b. Cost Recovery

The Department recommended that the Commission authorize cost recovery as requested by the Company, with the exception of legal expenses.

The Department stated that creating a regulatory asset is the equivalent of deferred accounting, which preserves a utility's ability to subsequently seek recovery of the costs in a future rate proceeding. In evaluating Xcel's proposal, the Department considered whether the costs are: related to utility operations for which ratepayers have incurred costs or received benefits; significant in amount; unusual or extraordinary; and subject to review for reasonableness and prudence.

In the Department's assessment, these criteria have been met. First, the costs are related to the power plant, which has been an ongoing source of electricity to Xcel's customers. Second, the costs, approximately \$106.8 million, are significant. Third, it is unusual to have the opportunity to reduce costs to ratepayers through purchase and early shutdown of a facility. Fourth, Xcel must, in the future, demonstrate the reasonableness of the regulatory asset.

But the Department opposed the recovery of legal expenses as proposed, stating that a base level of such costs is included in base rates and that the Company must therefore identify any incremental legal expenses to avoid over-collection. Further, the Department recommended against allowing the Company to earn a return on any incremental legal expenses by excluding them from the regulatory asset.

2. Associated Contract Loggers and Truckers of Minnesota

The Associated Contract Loggers and Truckers of Minnesota (ACLT) emphasized the integral role of biomass supply and transportation in executing a PPA. The ACLT asserted that the key role of supply and transportation justifies treating this organization as a party that must agree to termination, as a condition of Commission approval under Minn. Stat. § 216B.2424, subd. 9 (c)(1). The ACLT therefore filed a request to intervene as a party in this proceeding.

The ACLT urged the Commission to wait until after the Department of Employment and Economic Development (DEED) issues a study that addresses the economic impacts of closure of the facility, claiming that any action on the PPA prior to the results of the study would be premature.

The ACLT also asked the Commission to consider the far-reaching economic harms of closing the facility, including losses to companies that have invested millions of dollars in equipment purchases, property acquisition, facility construction, timber contracts, and workforce development. Closing the facility would likely cause the loss of hundreds of jobs within the industry and increase the cost of wood supply to forest products mills. Further, the ACLT stated that the facility utilizes biomass from timber, urban waste, trees with invasive species, turkey litter, and storm-damaged timber. Without the facility, the ACLT claimed the risk of fire hazard and the proliferation of invasive species would increase.

3. Minnesota Timber Producers Association

The Minnesota Timber Producers Association (MTPA) stated that Xcel is contractually obligated to continue operating the plant under a contract with the State of Minnesota that was signed in 1994 and that requires Xcel to acquire 75 MW of biomass in exchange for continuing to operate the Prairie Island Nuclear Power Plant. Approval of the PPA termination agreement would result in violation of Xcel's biomass obligations.

The MTPA also stated that closure of the facility is not consistent with the public interest, considering the adverse economic effects of closure, which outweigh Xcel's projected cost savings. According to the MPTA, the savings do not justify business and job loss that would occur if the facility is closed.

4. Minnesota Turkey Growers Association

The Minnesota Turkey Growers Association (MTGA) reiterated the importance of considering broader impacts of closure, as well as Xcel's contractual obligations that are the basis for the Company's biomass obligations. The MTGA also recommended that the Commission delay action until after the DEED study is released.

Additionally, the MTGA stated that more time is needed — at least five years — to give the organization's members time to find alternate means of disposing of turkey litter. This would ensure that turkey growers have time to develop a phase-in land program that would identify locations that can be used for disposal in compliance with applicable state pollution laws.

5. Peter Rothfork

Mr. Rothfork, who owns a family turkey farm in Stearns County, stated that over half of the approximately 15,000 tons of manure produced at his turkey farm is processed at the Benson Power facility. He emphasized the need for careful consideration of the timing of the closure, including the impact on responsible land management and the potential effects on lakes and streams if the closure happens as scheduled.

6. North American Fertilizer, LLC and Beaver Creek Transport, Inc.

North American Fertilizer, LLC (NAF) and Beaver Creek Transport, Inc. (Beaver Creek) filed joint comments expressing concern about the harmful economic impacts of closure.

NAF stated that it has an ash sale agreement with Benson Power under which it receives ash from the facility used to manufacture a fertilizer product sold across several Midwestern states.

NAF is one-third owned by a cooperative with 240 farmer members who will lose income and whose cooperative will lose employees if early termination is approved and the facility closed. NAF stated that it generates over \$5.2 million of gross revenue each year under the existing PPA and that early termination would result in the loss of 11 years' worth of income.

Beaver Creek stated that it has a contractual relationship with Benson Power and NAF under which it delivers poultry litter to the facility and manages the wood yard to ensure the availability of fuel at all times. Beaver Creek stated that if the facility were closed, its twelve full-time employees and seven part-time employees would lose their jobs, and work would no longer be available to eight independent contractors.

NAF and Beaver Creek recommended that the Commission wait until after the DEED study is released to take any action, stating that the Legislature anticipated economic consequences that the Commission could consider, similar to how the Commission evaluates certificate of need applications under Chapter 7849 of the Commission's rules. They stated that it would be unconscionable to ignore the consequences.

NAF and Beaver Creek also questioned the legal authority for the closure, stating that the biomass statute conflicts with a separate statute (Minn. Stat. § 116C.773) which requires Xcel to contract with the State of Minnesota to purchase 75 MW of biomass by December 31, 2002. The underlying contract, they claimed, remains in force, and closing the facility would violate Xcel's contractual obligations. They recommended requiring Xcel to study the impact of operating the facility as an Xcel-owned generation facility. Further analysis, they stated, would ensure full consideration of the impacts and provide the Commission with a better record on which to make a decision.

They also asserted that the Minnesota Environmental Protection Act (MEPA), Minn. Stat. Ch. 116D, applies to the proposal and that environmental review is required. They stated that allowing Xcel to close the plant is a major governmental action that has the potential for significant environmental effects, compelling MEPA review of the proposal.

7. Carlson Timber and Land Clearing; Fletcher Trucking; Dukek Logging; Sawyer Timber Company; Harbor Mulch Inc.; Dick Walsh Forest Products; Precision Landscape and Tree Inc.; Huls. Bros. Trucking, Inc.; Enberg Logging, LLC; Pflipsen Trucking LLC; and D&D Ventures Inc. (the Benson Power Suppliers and Haulers)

The Benson Power Suppliers and Haulers stated that they provide an essential component of the market that, in effect, facilitated the continued operation of the Prairie Island Nuclear Power Plant. They stated that closure would eliminate the market for the type of biomass they produce and deliver. As a result, facilities and equipment would be stranded, more than 200 jobs would be lost, and financial duress would ensue.

They recommended that the Commission consider these impacts in this proceeding because it would be in the public interest to examine damages associated with terminating supply and fuel handling agreements as the result of early termination of the PPA. And they claimed that the biomass statute grants the Commission broad discretion in deciding whether or not to approve the petition and that further development of the issues raised in comments is warranted.

8. Carol Overland

Ms. Overland was involved in legislative activities leading to the enactment of the biomass statute. She did not support the addition of Benson Power and filed comments in this proceeding supporting termination of the PPA, stating that use of public subsidies to operate a facility that does not produce clean energy is not in the public interest. But she also stated that the proposed \$20 million grant for economic development from the RDF to the City of Benson is inconsistent with the public interest and the purpose of the fund. She recommended that the Commission carefully consider whether Xcel might benefit from closure and that the record be more fully developed to identify the likely economic and related impacts of closing this and other similar facilities.

9. Alan Muller

Mr. Muller has been involved in proceedings involving poultry litter and incineration projects over many years in several states. Mr. Muller filed comments in support of terminating the PPA, citing the high percentage of wood-burning at the facility and its environmental consequences, including a low thermal efficiency rate of approximately twenty-four percent. But he also recommended extending the comment period in this case to further address the environmental impacts of the facility, and the Company's planned use of a \$20 million RDF grant to be disbursed to the City of Benson for economic development. He stated that the use of such funds is inconsistent with the purpose of the Fund.

10. The Department of Natural Resources

The Department of Natural Resources (DNR) filed comments stating that Xcel's proposal to terminate the PPA and close the facility risks jeopardizing effective land management by increasing the cost of responding to insect and disease issues. Without a biomass market, land managers would be forced to pay someone to dispose of damaged and diseased trees. The DNR recommended that the Commission conduct a more comprehensive analysis of the potential impact of closure on forest owners, loggers, and mills, all of whom rely on the biomass market to protect forest health and recreation.

The DNR recommended that the Commission study the following:

- Lost logging and mill infrastructure;
- Additional costs of managing woody residues at mills;
- Lost forest management opportunities including hazardous fuel reduction and forest health sanitation efforts; and
- Lost economic opportunities and costs associated with biomass facility closures.

11. The City of Benson

The City of Benson stated that it was instrumental in attracting the plant and invested millions of dollars in upgrades to facilities to begin and sustain production. As a result, the City stated that it was initially reluctant to support Xcel's proposal to terminate the PPA and close the facility. After further consideration, however, the City recognized that closure was likely inevitable and that engaging in discussions, and the process of closure, was more reasonable than continuing to oppose the proposal.

The City stated that although the plant has been an important part of the local economy for years, continuing to operate the plant is increasingly difficult economically. The bankruptcy and receivership of the first owner highlights that difficulty. With cleaner forms of renewable energy at lower prices more widely available, the likelihood of shutting the plant increased over time.

The City stated that the Legislature contemplated the reality of these issues, as well as the potential for adverse economic effects and therefore passed legislation anticipating closure of the plant, as well as a means for the City to incentivize new economic development through an RDF grant. The City stated that considering all of the circumstances, the proposal is in the public interest.

C. Reply Comments

1. The Department

The Department responded to several issues raised in comments by those opposing Xcel's proposal, and continued to recommend that the Commission approve it, with the exception of the Company's request to recover some legal expenses.

The Department stated that although Xcel and the State of Minnesota entered into a contractual relationship for the development of biomass facilities in 1994, the Benson Power facility did not qualify for meeting the mandate until subsequent revisions to the biomass statute were made, and as result, Xcel's contractual obligations have no bearing on this proceeding. The Department also disagreed that filing for party status in this proceeding conveys party status under the PPA termination agreement (which would require additional parties' consent to terminate the PPA).

The Department also disagreed with claims that a broader consideration of economic impacts is warranted under the biomass statute. Rather, the Department asserted that the statute is explicit in requiring a demonstration by the utility of the *ratepayer* impact of terminating a PPA. The Department stated that such concerns are more appropriately directed to the Legislature, which charged the Commission with considering the best interests of the customers of the public utility.

The Department also noted that the study required of DEED by the Legislature could address the issues raised by the DNR concerning Minnesota's industrial policy and its impact on the local economy, including ancillary providers of goods and services. Waiting for additional information from DEED would not change the Commission's role in considering ratepayer impact. And further record development would not resolve questions of fact in this case because no one has identified any disputed issues of material fact.

2. Xcel Energy

Xcel recommended against delaying a decision in this case, stating that the Company has satisfied the applicable statutory criteria under the biomass statute, which governs the proposal. Even if other economic impacts were considered, Xcel asserted that the proposal merits approval. The DEED study is intended to broadly assess economic impacts and provide the Legislature with further information on which it may act.

Xcel also noted that there are risks with delaying a decision; the scheduled closing date of the transaction is March 31, and either party may terminate the agreement if the closing does not occur by that date.

Xcel also challenged the claim that there are contractual obligations that prohibit the Company from terminating the PPA, stating that recent legislative changes to the biomass statute apply. And, Xcel opposed consideration of other costs beyond the costs of its customers, stating that costs associated with land management and logging and mill operations are not within the category of costs the Commission must consider.

D. Commission Action

The Commission appreciates the input of everyone who filed comments and recognizes the importance of the issues raised. The Commission is also cognizant, however, that the applicable statute in this case is both clear and specific.

Minn. Stat. § 216B.2424, subd. 9 (c), authorizes the Commission to approve termination of a PPA if:

- (1) all parties to the power purchase agreement, or their successors or assigns, as applicable, agree to the early termination of the power purchase agreement or the purchase and closure of the facility; and
- (2) the early termination of the power purchase agreement or the purchase and closure of the facility is in the best interest of the customers of the public utility subject to this section, taking into consideration any savings realized by customers as a result of the early termination of the power purchase agreement or the purchase and closure of the facility and any costs imposed on the customers under paragraph (e).

The statute gives the Commission discretion to decide whether to approve Xcel's proposal, considering the two conditions listed above. Accordingly, the Commission must consider whether Xcel has demonstrated that its proposal satisfies these conditions.

First, the original parties to the agreement, or their successors, include Xcel and Benson Power, LLC, which purchased the plant from FibroMinn, LLC through receivership. No one disputes that these two entities are parties who must agree to terminate the PPA, and that they have, in fact, agreed. Rather, other entities claimed status as additional parties to the agreement, stating that their consent to terminate the PPA is required. But the plain meaning of the statute does not authorize the agreement of anyone other than the original parties (or their successors) to the agreement.

Second, the Department conducted a thorough review of the Company's analysis of the ratepayer impacts of either continuing or terminating the PPA. The projected cost savings to ratepayers if the PPA is terminated is significant compared to the cost of continuing operations. Those who opposed the proposal did not dispute the projected savings to Xcel's ratepayers but stated that the Commission has the authority to consider other, broader economic impacts. The Commission is

not persuaded, however, that its review extends beyond the ratepayer impact described in the statute.

Based on the record and in light of the significant cost savings projected for Xcel's customers under the proposal, the Commission concurs with the Department that Xcel's proposal is reasonable, meets the requirements of the biomass statute, and is consistent with the public interest under Minn. Stat. § 216B.50. For all these reasons, the Commission will approve Xcel's proposal to terminate the PPA with Benson Power, LLC, acquire the plant, and close facility.

The statute also requires the Commission to consider a ratepayer cost-benefit analysis in deciding whether to approve the Company's proposed cost recovery. Under the statute, the Commission is authorized to approve a rate schedule that allows the automatic adjustment of charges to recover investments, expenses and costs, and earnings associated with terminating a PPA, as long as recovery is less than what would have been recovered from ratepayers under continuing operation of the facility. In this case, Xcel has demonstrated that terminating the PPA will result in customer savings greater than the amount Xcel will recover in costs.

The Commission will therefore approve Xcel's proposal to recover investments, expenses and costs, and earnings associated with the Benson Power PPA transaction through the FCA. The Commission will also approve Xcel's request for the creation of a regulatory asset for the costs associated with the transaction but will not allow FCA recovery of legal expenses, which are built into base rates. The rate of return on the asset is subject to future revision by the Commission and any payments made by customers through the FCA are subject to a true-up.

The Commission will also require Xcel to seek termination of the backup power agreement with the City of Benson in accordance with the terms of that contract if it is in the best interests of ratepayers. If Xcel enters into such a contract, the Company must file a compliance filing within 30 days after issuance of this order that includes a description of the termination provisions of the contract and an explanation, to be included in any FCA filings where the Company seeks recovery of these payments, of how the Company fulfilled the requirement to seek termination in the best interests of ratepayers.

III. Laurentian Energy Authority PPA

A. Xcel's Proposal

1. PPA Termination Agreement

In its filing proposing early termination of the LEA PPA, Xcel stated that the current PPA is significantly above market price and that terminating the PPA, after accounting for related costs, including replacement market energy, is expected to achieve a net present value savings of \$87 million over the remaining life of the PPA, which would otherwise terminate on December 31, 2026.

As with the Benson Power PPA, Xcel entered into the original LEA agreement to satisfy a legislative mandate requiring Xcel to construct and operate, or contract to construct, 125 MW of installed capacity (subsequently reduced to 110 MW) generated by farm-grown closed-loop biomass.

To determine the cost of continuing the PPA, Xcel calculated the contract price for the period 2017 through the end of the contract as well as the costs of fuel procurement and transportation exceeding \$3.40 per million metric British thermal units, which LEA passes onto Xcel and which is collected through the FCA. The Company also calculated the expected annual production of the facility based on historical annual production data and stated that its analysis shows that from 2018 to 2026, total contract costs equal a net present value of \$226 million.

Xcel analyzed the cost of terminating the PPA by calculating the cost of replacement power using a market analysis of projected energy prices through 2026. The cost ranges in price from approximately \$24/MWh to \$34/MWh. Xcel excluded from its analysis the cost of replacement capacity in light of the fact that the facility is relatively small in size and Xcel's forecasts show sufficient capacity available through existing resources. As a result, Xcel stated that termination of the PPA is not expected to materially affect the Company's capacity needs.

Xcel also stated that the cost of replacement energy is a conservative assumption of expected energy needs, and as a result, the savings to customers is likely to be greater than the analysis shows.

The cost in nominal dollars of terminating the PPA includes a payment by Xcel of \$108.5 million in equal installments of approximately \$18 million over six years. The total net present value of terminating the PPA is \$139 million, compared to a net present value of \$226 million to continue operating under the PPA. The net present value savings to customers is therefore projected to be \$87 million.

Based on its analysis, Xcel stated that the proposal to terminate the PPA satisfies the conditions of the biomass statute, which requires that the parties to the PPA agree to early termination and the early termination is in the best interest of the customers of the public utility. Xcel stated that the parties to the PPA, Xcel and LEA, agree to termination and that based on the Company's cost analysis, the transaction is in the best interest of its customers.

Xcel stated that in support of the transaction, the Legislature authorized a \$34 million grant to LEA from the RDF to aid in the repayment of its bondholder debt and in support of the facility's conversion to thermal units.⁹ According to Xcel, LEA stated that the bondholders will not release their security in the contract until their bonds are paid (the PPA was pledged as security for the bonds). Xcel and LEA therefore entered into an RDF contract that includes terms and conditions governing the applicable payments. Xcel requested Commission approval of the contract, which implements the statutory requirement that the Company direct a payment of \$34 million to LEA in equal annual installments of \$6,800,000 for five years.

2. Cost recovery

Xcel proposed a cost recovery method for recovering the costs of terminating the LEA PPA similar to that requested for terminating the Benson Power PPA.

The biomass statute authorizes the automatic adjustment of charges for collecting the costs of

⁹ Minn. Stat. § 116C.779, subd. 1 (g).

early termination of a PPA, and Xcel therefore requested to recover its costs under the FCA.¹⁰ Xcel stated that it intends to recover the costs over the six-year period during which payments will be made to LEA. Xcel also noted that the current PPA costs are recovered through the FCA and that its cost recovery request is consistent with the statute's requirement to demonstrate "that the recovery of investments, expenses and costs, and earnings on the investments is less than the costs that would have been recovered from customers had the utility continued to purchase energy under the power purchase agreement in effect before any option available under this section is approved by the Commission."¹¹

B. Comments on the Proposal

1. The Department

a. PPA Termination Agreement

The Department supported the Company's proposal and recommended that the Commission approve it.

The Department evaluated the Company's cost-benefit analysis, potential resource plan impacts, and applicable regulations.

The Department analyzed the Company's assumptions and calculations of the current PPA in Xcel's model and stated that the assumptions and calculations are reasonable and that the estimated price per MWh for 2018 is comparable to the prices Xcel has paid under the PPA in the last two years. The Department also stated that Xcel's assumptions and calculations used to determine the cost of terminating the PPA are also reasonable. The result demonstrates that terminating the PPA is more economical to ratepayers than continuing with the PPA.

The Department also concurred with Xcel's statement that the modeling assumptions of the cost of market replacement energy are likely conservative considering that Xcel currently has excess generation. Terminating the PPA is therefore likely to produce greater savings to Xcel's customers than projected. It is also true that costs savings could be achieved because the excess generation could be sold – rather than be used to replace the energy produced by the LEA facility – on the spot market, increasing Xcel's earnings.

The Department also examined the risk to ratepayers if the PPA is terminated and stated that Xcel's ratepayers are reasonably protected from risk primarily because Xcel will not be relying on the facility for energy or capacity once the transaction closes, and the risk of one party defaulting is low. LEA is incentivized under the termination contract to comply with the condition that payments be made to bondholders because LEA will not be released from its obligations under the PPA until such payments are made.

The Department also considered the effect of the proposal on Xcel's most recent integrated resource plan, which assumed that the facility would continue to operate until the scheduled termination date of the PPA. The Department stated that it considered numerous contingencies

¹⁰ Minn. Stat. § 216B.2424, subd. 9 (e).

¹¹ *Id.*

with larger impacts than the closure of LEA in the Company's most recent IRP and that there is no expectation that closing the facility would materially affect resource planning.

The Department considered the effect of termination on Xcel's compliance with renewable energy standards requirements under Minn. Stat. § 216B.1691, which sets forth requirements for the procurement of renewable energy by electric utilities. The Department stated that although early termination of the LEA PPA would result in approximately 2.4 million fewer RECs for Xcel than anticipated, that amount represents a small fraction of the RECs the Company will obtain from its recently approved wind portfolio (over the life of those wind facilities).¹²

The Department also stated that early termination of the PPA is consistent with the biomass statute, Minn. Stat. § 216B.2424, subd. 9 (c), which authorizes the Commission to approve early termination of a PPA if parties to the original PPA agree to the terms and conditions governing termination, and if terminating the PPA is in the best interest of the utility's customers, considering, in part, the method of cost recovery. The Department stated that as Xcel explained, the original parties to the PPA are in agreement, and that the transaction is in the best interest of Xcel's customers, considering the anticipated ratepayer savings.

Finally, the Department stated that use of the RDF payment mitigates costs to those industries affected by closure and that the DEED study will provide further opportunity to the Legislature to address the broader impacts of closure.

b. Cost Recovery

The Department concurred with the Company's cost recovery proposal, stating that it satisfies the requirements of the biomass statute, which authorizes the automatic adjustment of charges for costs related to early termination of a PPA, if the costs recovered are less than the costs that would have been recovered if energy purchases under the PPA continued.

2. Minnesota Timber Producers Association

The MTPA raised issues concerning the closure of the LEA facility similar to those it raised concerning the closure of the Benson Power facility.

The MTPA stated that closure of the facility is not consistent with the public interest, considering the adverse economic effects of closure, which outweigh Xcel's projected costs savings. Those savings do not justify the lost economic activity that would occur if the facility is closed.

3. Associated Contract Loggers and Truckers of Minnesota

The ACLT raised issues concerning closure of the LEA facility similar to those it raised concerning closure of the Benson Power facility. The ACLT emphasized the integral role of biomass supply and transportation in executing a PPA, stating that the key role of supply and transportation justifies treating this organization as a party that must agree to termination, as a condition of Commission approval of the termination agreement under Minn. Stat. § 216B.2424, subd. 9 (c)(1). The ACLT therefore filed a request to intervene as a party in this proceeding.

¹² *In the Matter of the Petition of Xcel Energy for Approval of the Acquisition of Wind Generation from the Company's 2016 – 2030 Integrated Resource Plan*, Docket No. E-002/M-16-777.

The ACLT urged the Commission to wait until after DEED issues its study addressing the economic impacts of closure of the facility, claiming that any action on the PPA prior to the results of the study would be premature.

The ACLT also asked the Commission to consider the far-reaching economic harms of closing the facility, including losses to companies that have invested millions of dollars in equipment purchases, property acquisition, facility construction, timber contracts, and workforce development. Closing the facility, ACLT claimed, is likely to cause the loss of hundreds of jobs within the industry and increase the cost of wood supply to forest products mills. Further, the ACLT stated that the facility utilizes biomass from timber, urban waste, trees with invasive species, turkey litter, and storm damaged timber. Without the facility, the risk of fire hazard and the proliferation of invasive species would increase.

4. Alan Muller

Mr. Muller supported closure of the facility but opposed the costs. He stated that the total payout, including the \$34 million RDF grant, would result in a total cost of \$142.5 million to ratepayers. Compared to the projected savings of \$87 million to terminate the PPA, Mr. Muller stated that Xcel's customers would lose \$55 million. He stated that regardless of whether the RDF grant money would be used on other projects elsewhere, the RDF grant money should have been included in Xcel's cost analysis.

5. The Department of Natural Resources

The DNR raised issues concerning closure of the LEA facility similar to the issues it raised concerning closure of the Benson Power facility.

The DNR stated that terminating PPA and closing the facility risks jeopardizing effective land management by increasing the cost of responding to insect and disease issues. Without a biomass market, land managers would be forced to pay someone to dispose of damaged and diseased trees. The DNR recommended that the Commission conduct a more comprehensive analysis of the potential impact of closure on forest owners, loggers, and mills, all of whom rely on the biomass market to protect forest health and recreation, including a study of the following:

- Lost logging and mill infrastructure;
- Additional costs of managing woody residues at mills;
- Lost forest management opportunities including hazardous fuel reduction and forest health sanitation efforts; and
- Lost economic opportunities and costs associated with biomass facility closures.

6. The United States Forest Service, Superior National Forest

The Superior National Forest stated that it has grave concerns over the closure of the biomass market, which the LEA provides to Northeastern Minnesota and the Superior National Forest.

The Superior National Forest stated that consideration of closure requires a more comprehensive analysis that includes examination of the potential impact on the removal of woody debris, which plays a crucial role in reducing hazardous fuels and preventing catastrophic wildfires. Using

alternative disposal methods is likely to significantly increase costs, putting at risk responsible removal and effective land management in the region.

7. Laurentian Energy Authority I, LLC

LEA is a party to the PPA termination agreement and recommended that the Commission approve it, along with the RDF contract. Its members are two municipal utilities: the Hibbing Public Utilities Commission and the Virginia Public Utilities Commission.

LEA stated that terminating the agreement would enable these municipal utilities to continue operating the facility in a manner that best serves their customers both economically and environmentally. Changes in the cost of energy, including the increasingly lower cost of renewable energy, make those opportunities more advantageous to their customers than continuing to operate under the current PPA. The decision to terminate the PPA was nearly unanimous by all boards and commissions, reflecting a recognition that on balance, terminating the PPA is in the best interest of their communities.

Limiting ratepayer costs is vitally important to a region that has experienced substantial population loss and where at least 20 percent of the population is low-income. But LEA also stated that it openly discussed closure of the plant with those who would be directly affected, including loggers, to whom it offered buy-out payments to partially offset economic losses.

LEA also stated that the purchase price of terminating the PPA will be used for transition activities and utility system improvements that would enable the two municipal utilities to improve operations, manage customer costs, and meet environmental standards. LEA stated that the PPA termination agreement complies with the applicable biomass statute requirements and should therefore be approved.

C. Reply Comments

1. The Department

The Department stated that broadly construing the public interest is not contemplated by the statute, that the proposal attempts to mitigate damages by authorizing payments from the RDF, and that the proposal satisfies applicable statutory requirements.

The Department stated that the issues raised by the DNR and the Superior National Forest are beyond the scope of the Commission's responsibilities and are more aptly considered by the Legislature.

The Department also reiterated its position that the Commission focus its consideration on the impact to Xcel's ratepayers, consistent with the biomass statute.

2. Xcel Energy

Xcel emphasized that under any standard, early termination is in the best interest of its customers and that the record fully supports such a decision. Xcel also stated that even under a broader public interest analysis that accounts for customer savings, environmental effects, and community and state support, the termination agreement warrants approval.

Xcel stated that the support of the Virginia and Hibbing Public Utilities Commissions highlights broader support of the termination agreement, which was carefully considered by these boards and their communities.

D. Commission Action

As previously stated, the Commission appreciates the input of everyone who filed comments and recognizes the importance of the issues raised. The Commission is also cognizant, however, that the applicable statute in this case is both clear and specific.

Minn. Stat. § 216B.2424, subd. 9 (c), authorizes the Commission to approve termination of a PPA if:

- (1) all parties to the power purchase agreement, or their successors or assigns, as applicable, agree to the early termination of the power purchase agreement or the purchase and closure of the facility; and
- (2) the early termination of the power purchase agreement or the purchase and closure of the facility is in the best interest of the customers of the public utility subject to this section, taking into consideration any savings realized by customers as a result of the early termination of the power purchase agreement or the purchase and closure of the facility and any costs imposed on the customers under paragraph (e).

The statute gives the Commission discretion to decide whether to approve Xcel's proposal, considering the two conditions listed above. Accordingly, the Commission must consider whether Xcel has demonstrated that its proposal satisfies these conditions.

First, the original parties to the agreement, Xcel and LEA, have agreed to terminate the PPA. No one disputes that these two entities are parties that must agree to terminate the PPA, and that they have, in fact, agreed. Rather, other entities claimed status as additional parties to the agreement, stating that their consent to terminate the PPA is required. But the plain meaning of the statute does not authorize the Commission to treat anyone other than the original parties (or their successors) to the agreement as parties who must agree on terminating the PPA.

Second, the Department conducted a thorough review of the Company's analysis of the ratepayer impacts of either continuing or terminating the PPA. The projected cost savings to ratepayers from terminating the PPA is significant compared to the cost of continuing operations. And those who opposed the proposal did not dispute the projected savings to Xcel's ratepayers but stated that the Commission has the authority to consider other, broader economic impacts. The Commission is not persuaded, however, that its review extends beyond the ratepayer impact described in the statute.

Considering the significant cost savings projected to Xcel's customers under the proposal, the Commission concurs with the Department that Xcel's proposal is reasonable and meets the requirements of the biomass statute. The Commission will therefore approve the petition to terminate the PPA with LEA and the corresponding RDF grant contract.

The statute also requires the Commission to consider a ratepayer cost-benefit analysis in deciding whether to approve the Company's proposed cost recovery. Under the statute, the Commission is authorized to approve a rate schedule that allows the automatic adjustment of charges to recover investments, expenses and costs, and earnings associated with terminating a PPA, as long as recovery is less than what would have been recovered from ratepayers under continuing operation of the facility. In this case, Xcel has demonstrated that terminating the PPA will result in customer savings greater than the amount Xcel will recover in costs. The Commission will therefore approve Xcel's proposal to recover the expenses and costs associated with the LEA transaction through the FCA.

IV. Rule Variances

Under Minn. R. 7829.3200, the Commission must vary its rules upon making the following findings:

- (1) enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- (2) granting the variance would not adversely affect the public interest; and
- (3) granting the variance would not conflict with standards imposed by law.

In this case, Xcel requested that the Commission vary the FCA rules to allow Xcel to recover its costs for terminating the PPAs through the FCA. Xcel also requested a variance to filing requirements applicable to the sale or transfer of utility assets.

A. The FCA Rules

Specifically, Xcel requested that the Commission vary Minn. R. 7825.2500 and 7825.2600, subp. 2, which govern the automatic adjustment of charges for energy purchased. Because the Company will not purchase energy as a result of terminating the PPA, the Company requested a rule variance.

The Company stated that the requirements for a variance are met. First, enforcement of the rule would impose an excessive burden on customers because without cost recovery, the Company could not proceed with terminating the PPA, and the anticipated customer savings would be lost. Second, granting the variance would not adversely affect the public interest, and would, in fact further the public interest due to the anticipated cost savings to customers. Third, granting the variance would not conflict with any standards imposed by law.

The MTPA opposed Xcel's variance request. The MTPA stated that the request would adversely affect the public interest, considering the broader economic impacts of closure of the facilities. The MTPA also stated that granting the variance would conflict with Minn. Stat. § 116C.773, which requires a contract between Xcel and the State of Minnesota mandating biomass production.

The Department concurred with Xcel's reasoning, stating that issues concerning the broader economic impacts of the proposal do not directly relate to the question of whether to grant a rule

variance. Further, the Department stated that the law mandating biomass is not applicable to the variance request.

The Commission concurs with the Company that the requirements for a variance are met. First, enforcing the rule would prevent the Company from recovering its costs as contemplated by the biomass statute. Without such recovery, the termination agreement is unlikely to materialize, and ratepayers would therefore lose the opportunity to benefit from the projected savings. Second, granting the variance is consistent with the best interest of Xcel's ratepayers. The projected savings justify approval of the agreement and the corresponding cost recovery proposal. Third, the biomass statute contemplates such cost recovery under subdivision 9 (e), which states:

A utility may petition the commission to approve a rate schedule that provides for the automatic adjustment of charges to recover investments, expenses and costs, and earnings on the investments associated with a new or amended power purchase agreement, the early termination of a power purchase agreement, or the purchase and closure of a facility. The commission may approve the rate schedule upon a showing that the recovery of investments, expenses and costs, and earnings on the investments is less than the costs that would have been recovered from customers had the utility continued to purchase energy under the power purchase agreement in effect before any option available under this section is approved by the commission. If approved by the commission, cost recovery under this paragraph may include all cost recovery allowed for renewable facilities under section 216B.1645, subdivisions 2 and 2a.

For these reasons, the Commission will grant Xcel's request to vary the FCA rules to allow Xcel to recover investments, expenses and costs, and earnings associated with the transactions through the FCA, as set out in Xcel's petitions and the Department's analyses.

B. Minn. R. 7825.1800 (B)

Xcel also requested a variance to Minn. R. 7825.1800 (B), which requires a petition for approval of an asset transfer to include the information required under Minn. R. 7825.1400 (A)-(J) concerning capital structure filings. The rule requires data on items such as securities issuances and affiliated interest and applies to Xcel's proposal to purchase the Benson Power facility.

Xcel stated that the requirements for a variance are met.

First, the Company stated that purchasing the facility does not implicate the information required by the rule and the rule would therefore impose an excessive burden on the Company to produce information that is not relevant.

Second, granting the variance would not adversely affect the public interest because the proposed transaction does not involve the issuance of securities.

Third, granting a variance does not conflict with standards imposed by law and is consistent with prior Commission decision granting variances in such instances as this. Xcel also included in its

filing a description of the cost of the assets and estimated accumulated depreciation that were filed by Benson Power and that represent the allocation of the purchase price to assets acquired and liabilities assumed when Benson Power acquired the assets from Fibrominn, LLC.

The Commission concurs that the requirements for a variance are met.

First, as Xcel noted, the data required by the rule is not relevant to the petition, and Xcel provided other relevant cost data. As a result, enforcing the rule would impose an excessive burden on the Company by requiring the filing of data that may not be available and that is not relevant to the petition.

Second, the transaction does not involve the issuance of securities and therefore granting the variance would not adversely affect the public interest.

Third, a variance would not conflict with standards imposed by law because the filing requirements are not specified anywhere but in the Commission's rules. For these reasons, the Commission will grant Xcel a variance to Minn. R. 7825.1800 (B), to exempt the Company from the filing requirements of Minn. R. 7825.1400 (A)-(J).

ORDER

1. The Commission hereby approves Xcel's proposal to terminate the PPA with Benson Power, LLC, acquire the plant, and close the facility.
2. The Commission hereby approves Xcel's proposed FCA variance request to recover investments, expenses and costs, and earnings associated with the Benson Power PPA transaction through the FCA as set forth in Xcel's petition and the Department's analysis.
3. The Commission hereby approves Xcel's request for the creation of a regulatory asset for the costs associated with the transaction, except the recovery of legal expenses, which are built into base rates. The rate of return on the asset is subject to future revision by the Commission and any payments by customers through the FCA are subject to a true-up.
4. Xcel shall seek termination of the backup power agreement with the City of Benson in accordance with the terms of that contract if it is in the best interest of ratepayers. If Xcel enters into such a contract, the Company must file a compliance filing within 30 days after the date of this order that includes a description of the termination provisions of the contract, and Xcel shall also explain, in any FCA filings where the Company seeks recovery of these payments, how the Company fulfilled the requirement to seek termination in the best interest of ratepayers.
5. The Commission hereby varies Minn. R. 7825.1800 (B).
6. The Commission finds that the transaction to temporarily acquire the Benson facility is consistent with the public interest and otherwise meets the requirements of Minn. Stat. § 216B.50.

7. The Commission hereby approves the petition to terminate the PPA with Laurentian Energy Authority I, LLC and approves the corresponding RDF grant contract.
8. The Commission hereby approves Xcel's proposal to recover the expenses and costs associated with the LEA transaction through the FCA.
9. The Commission hereby approves Xcel's proposed FCA rule variance requests, as set forth in Xcel's petition and the Department's analysis.
10. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary



This document can be made available in alternative formats (e.g., large print or audio) by calling 651.296.0406 (voice). Persons with hearing loss or speech disabilities may call us through their preferred Telecommunications Relay Service or email consumer.puc@state.mn.us for assistance.